

DISPOSABLE CHILDREN IN BLACK FACES: THE VIOLENCE INITIATIVE AS INNER-CITY CONTAINMENT POLICY

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I. INTRODUCTION

On February 11, 1992, Dr. Frederick Goodwin, then Director of the Alcohol Drug Abuse and Mental Health Administration and main federal psychiatrist, announced that the chief public concern in the United States was violence.¹ Moreover, Dr. Goodwin announced that violence was a

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1. According to Dr. Goodwin, the problem "ranks always number one and number two on everybody's public concern list, drugs is the number one public concern in society's eyes, and of course related drugs" Dr. Frederick K. Goodwin, Address at the Meeting of the

"public health" concern that mandated the policy-making intervention of public health agencies. He proposed that various public health agencies participate in an initiative to combat the growth of violence in the inner-city areas of the United States. He advocated that these agencies, among them the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, the Centers for Disease Control, and others under the auspices of the Department of Health and Human Services, utilize their individual and combined "expertise" in detecting "individual vulnerability" to violent behavior.² Thus, a major federal initiative to combat violence came to the public's attention.³ As announced by Dr. Goodwin, however, the "Violence Initiative," as it came to be more popularly known, was to be more than simply an in depth and more efficient effort toward collective policy making. It was to be a response to the growing rates of violence in the inner city.

As one of the federal government's responses to this growing rate of violence,⁴ the Violence Initiative was scheduled for full operation in

National Mental Health Advisory Council 115, 116 (Feb. 11, 1992) (unpublished transcript on file with author) [hereinafter Goodwin Mental Health Address].

2. *Id.*

3. The Violence Initiative was not the first effort of various federal agencies related to the study of violence, rather it was the first effort to coordinate research, much of which was already under way. For example: The "Perpetrators of Violence Research Program" is a research project funded under the direction of the National Institute of Mental Health that was begun prior to the announcement of the Violence Initiative as a coordinated project on violence research. Many universities have been grant recipients under this program.

In 1990 and 1991, the National Institute of Mental Health (NIMH) awarded a total of 1534 and 1679 research grants amounting to \$297,430,233 and \$353,403,175, respectively. Letter from David M. Stoff, Ph.D., Chief, Perpetrators of Violence Research Program, National Institute of Mental Health, to Sophia Glezos, Office of Scientific Information, Public Affairs and Science Reports Branch (June 10, 1992) (on file with author). Of the human violence grants awarded in 1990, 16 dealt with behavioral issues (totalling \$4,086,265), one dealt with biological causes (totalling \$64,762), and one dealt with biological treatments (totalling \$168,506). *Id.* Of the human violence grants awarded in 1991, 20 dealt with behavioral issues (totalling \$5,207,658), three dealt with biological causes (totalling \$485,157), and two dealt with biological treatments (totalling \$421,425). *Id.*

The research priorities of the Perpetrators of Violence Research Program include understanding, treating, managing, and preventing violent behavior by studying: the manifestation of aggressive and violent behaviors in children and adolescents; domestic or family violence (child physical and sexual abuse and spousal assault); sexual assault and rape perpetrated by juveniles and adults; anti-gay and anti-lesbian violence; and criminal homicide. See DEP'T OF HEALTH AND HUMAN SERV. ET AL., PROGRAM ANNOUNCEMENT, PA-92-03, RESEARCH ON PERPETRATORS OF VIOLENCE (Sept. 1991) (announcing that NIMH will accept research grant applications in response to this program announcement).

4. The federal government announced the implementation of "Operation Weed and Seed" in 1991 as a response to the growth of violent crime, drug use and gang activity in "high-crime neighborhoods." DEP'T OF JUSTICE, OPERATION WEED AND SEED (Fiscal Year 1993 Program Description). The program's goal is to "weed out" crime from targeted neighborhoods and then to "seed" the targeted sites "with a wide range of crime and drug prevention programs and human service agency resources to prevent crime from reoccurring." *Id.* at 1. The four elements

1994.⁵ The Initiative planned to collect and coordinate many federal projects involving violence research under the auspices of the Department of Health and Human Services and its member agencies.⁶

The Violence Initiative as a concept, however, has assumed a role in popular understanding as being both a distinct message as well as a messenger. Essentially, the message—a body of research that ranges in substantive study from malnutrition, poor health care for pregnant mothers and its effect on newborns, to bio-psychiatric interventions—has been subsumed in the identity of Dr. Goodwin, whose delivery of the message was premised on the suggestion that much of the violent behavior in the inner city may have biological or genetic origins.⁷ A second major premise of the message announced by Goodwin is that factors of individual vulnerability and predisposition to violent behavior exist—factors that may be detected at an early age.⁸

With this, it was announced that the focus of the initiative's intervention and problem-solving policy mandate was to be the children of the inner city.⁹ What this really meant, however, was that the focus of the Violence Initiative would be Black or African-American youth.¹⁰

of the program include coordinated law enforcement, community policing, human services, and economic revitalization. *Id.* at 1-2.

5. Goodwin Mental Health Address, *supra* note 1, at 115.

6. See Goodwin Mental Health Address, *supra* note 1.

7. See generally DEPARTMENT OF HEALTH AND HUMAN SERVICES, REPORT OF THE SECRETARY'S BLUE RIBBON PANEL ON VIOLENCE PREVENTION (Jan. 15, 1993); Peter R. Breggin & Ginger R. Breggin, *The Federal Violence Initiative: Threats to Black Children (and Others)*, 24 PSYCHOL. DISCOURSE 8 (Apr. 1993). Note that the writer identifies the Violence Initiative in the same manner, as representing what was said about it as well as who was saying it.

8. Goodwin Mental Health Address, *supra* note 1, at 117.

9. Goodwin Mental Health Address, *supra* note 1, at 117. See also Dr. Frederick K. Goodwin, Conduct Disorder as a Precursor to Adult Violence and Substance Abuse: Can the Progression Be Halted, Address to the American Psychiatric Association Annual Convention, Washington, D.C. (May 1992) (unpublished transcript available from author) [hereinafter Goodwin American Psychiatric Address].

10. The United States Bureau of Census reports that Blacks are, largely, an urban people. U.S. DEP'T OF COMMERCE, ECONOMICS & STATISTICS ADMINISTRATION, BUREAU OF THE CENSUS, WE THE AMERICAN BLACKS 1 (Sept. 1993). Census statistics report that the majority of Blacks in America live in cities and large metropolitan areas. *Id.* at 1. In 1990, 84% of Blacks in this country lived in metropolitan areas, with 57% living in central cities. *Id.* at 3. During that year, the five largest metropolitan areas in the United States had substantial Black populations: specifically, New York at 28.7%; Los Angeles at 14.0%; Chicago at 39.1%; San Francisco at 10.9% and Philadelphia at 39.9%. U.S. DEP'T OF COMMERCE, ECONOMIC & STATISTICS ADMINISTRATION, BUREAU OF CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 35-37 (112th ed. 1992). The statistical data for other major cities is even more revealing, as they also had significantly large percentages of Blacks in their populations: Atlanta at 67.1%; Detroit at 75.7%; Memphis at 54.8%; New Orleans at 61.9%; Washington at 65.8%. *Id.* When the economic statistics are combined with the population statistics, a distressing factor is revealed—Blacks who lived below the poverty line comprised 33.8% of the total population of central cities such as those previously mentioned. U.S. DEP'T OF COMMERCE, ECONOMIC &

In one of the first introductions of the Violence Initiative, Dr. Goodwin remarked:

If you look, for example, at male monkeys, especially in the wild, roughly half of them survive to adulthood. The other half die by violence. That is the natural way it is for males, to knock each other off and in fact, there are some interesting evolutionary implications of that because the same hyperaggressive monkeys who kill each other are also hypersexual, so they copulate more to offset the fact that more of them are dying.

Now, one could say that if some of the loss of social structure in this society, and particularly within the high impact inner-city areas, has removed some of the civilizing evolutionary things that we have built up and that maybe it isn't just the careless use of the word when people call certain areas of certain cities jungles, that we may have gone back to what might be more natural, without all the social controls that we have imposed upon ourselves as a civilization over thousands of years in our evolution.¹¹

STATISTICS ADMINISTRATION, BUREAU OF CENSUS, *THE BLACK POPULATION IN THE UNITED STATES* (Mar. 1991).

Moreover, statistical data indicates that other people of color are likely to be represented in the disproportionate mix of those who are both poor and living in the central cities of the United States. In 1991, Hispanics were reported to be more than two times as likely as non-Hispanics to be living in poverty: they represented only 9% of the total population, but 17.8% of all persons living in poverty. U.S. DEP'T OF COMMERCE, ECONOMICS & STATISTICS ADMINISTRATION, BUREAU OF CENSUS, *CURRENT POPULATION REPORTS, POPULATION PROFILE OF THE UNITED STATES* 36-37 (1993). Comparatively, in 1990 Hispanics represented 24.4% of the population in New York; 39.9% of the population in Los Angeles; and 13.9% of the population in San Francisco. *Id.* The "inner city" has therefore become a code word for urban areas such as these that are comprised of people who are both poor and Black or otherwise persons of color.

One writer has called the inner city the "welfare plantation" of the current age in that it possesses many characteristics of the southern slave plantations. It is argued that this is because Blacks are still "separate but not equal, still dependent on the paternalism of the White power elite, still disenfranchised and powerless, still treated as second-class citizens in the land of their birth, and still dehumanized and depersonalized, exploited and extorted, neglected and narcotized." YOUNG, *BLACK AND MALE IN AMERICA: AN ENDANGERED SPECIES* at xxii (Jewelle T. Gibbs et al. eds., 1988) [hereinafter *AN ENDANGERED SPECIES*]. Another writer sees the inner city as representing the "American equivalent of the South African homelands" wherein "poverty is less the source than the status of men and women who, despised because of their race, seek refuge in self-rejection." DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* 12 (1992). In the inner city, poverty is a concomitant of "drug related crime, teenaged parenthood, and disrupted and disrupting family life" that are "manifestations of a despair that feeds on itself." *Id.*

11. Goodwin Mental Health Address, *supra* note 1, at 119-20. One context for the consideration of Dr. Goodwin's comments is the current research studying male rhesus monkeys:

In the wild, rhesus monkeys live in large troops ranging from a few dozen animals to several hundred. Young males leave at puberty and live in "gangs" of other adolescent males, eventually seeking out a new troop and trying to join it. As Goodwin correctly said in his ill-fated remarks, these "transitional" adolescents are often so physically violent that as many as half are killed before reaching adulthood.

Boyce Rensberger, *Science and Sensitivity: Primates, Politics and the Sudden Debate Over the Origins of Human Violence*, WASH. POST, Mar. 1, 1992, at C3. A significant part of the research

The references to the naturalness of hyperaggressive and hypersexual survival-oriented simian behavior, and the suggestion that similar behavior takes place in inner cities removed from social controls, together with the collective representation of "man" as the primary "civilizing" force in the world, camouflage and yet make clear an underlying image of the White man as the primary civilizing force in the world.¹² These remarks drew attention and sparked resistance to the research Goodwin suggested because once the focus of the Violence Initiative pointed towards the "inner city," poor people of color understood the code from the smoke signal to mean that the Dr. Goodwin's discussion was about them.¹³

Had these remarks not been made, the Violence Initiative may have proceeded quietly and gone unnoticed amidst the federal government's bureaucratic maze. However, the images created by Goodwin's words raised doubts as to whether children of the inner city were truly respected as legal entities, produced skepticism as to the true motives of those sponsoring programs, and suggested questions concerning the legitimacy of the endeavor.¹⁴

on biochemical causes of violence examines primate research data, specifically, the relationship of violent behavior to the low levels of serotonin in their bodies. Serotonin is a substance contained in the fluid that is found in the brain and the spinal cord. *Id.*

Subsequent to Dr. Goodwin's remarks and prior to his resignation from the Alcohol, Drug Abuse & Mental Health Association (ADAMHA), Dr. Goodwin spoke to a meeting of the Mental Health Leadership Forum on February 25, 1992, wherein he characterized his remarks as having been inadvertently made and mistakenly interpreted. In commenting on his views on urban violence, he is reported to have outlined, in detail, the federal plan for dealing with inner-city violence which was to include the establishment of biological markers for the early identification of conduct-disordered children who could be targeted by the age of five. Letter from Ernest Herman, Executive Director and Eli Newberger, M.D., President of the American Orthopsychiatric Association Inc., to Dr. Louis W. Sullivan, M.D. (Mar. 11, 1992) (on file with author) (protesting the appointment of Dr. Frederick K. Goodwin as director of the National Institute of Mental Health).

As to the "inadvertence" of Dr. Goodwin's remarks, one writer would suggest that they are reflective of the difficulty with which certain assumptions about the human race are discarded. Richard Delgado, *Zero-Based Racial Politics and an Infinity-Based Response: Will Endless Talking Cure America's Racial Ills?*, 80 GEO. L.J. 1879, 1884 (1992). Delgado suggests that racism, and attitudes and beliefs about race, are not easily discarded because they are not "mistakes," but instead, as part of the dominant narrative, they are essential ingredients in understanding the way the world is ordered. *Id.* at 1882.

12. As noted by Michael J. Lynch and E. Britt Patterson, the civilizing influence of Europeans is a symbol representing the

physical and psychological boundaries that [separate them] from "others." Robertson [reminds us that] "[c]olor and race . . . [have] gradually replaced class and birth as primary determinant of belonging. . . . By the time of the American Revolution, Indians and Blacks . . . had come to be perceived not only as pagan and savage but as ignorant, inferior, and most importantly, *colored*. Lines were drawn around these peoples of color, frontiers to separate White Americans from other."

MICHAEL J. LYNCH & E. BRITT PATTERSON, *RACE AND CRIMINAL JUSTICE* 13 (1991) (citing J.O. ROBERTSON, *AMERICAN MYTH, AMERICAN REALITY* (1980)).

13. See LYNCH & PATTERSON, *supra* note 12.

14. Dr. Goodwin's comment generated controversy not only embracing the Violence

Dr. Goodwin's remarks were made within a social, political, and scientific context that has provided tremendous growth opportunities for genetic research in recent years.¹⁵ Moreover, it has been recognized that genetic evidence may one day be commonly accepted by the courts in solving an array of legal issues including tort, criminal, trust and estate, family, and labor law.¹⁶ With these considerations as reference points, critics of the Violence Initiative recognized it as a specific threat to African-American children—threatening the creation of an “institutional

Initiative, but also other research endeavors relating to genetic research. A conference entitled Genetic Factors in Crime: Findings, Uses & Implications, sponsored by the Institute for Philosophy & Public Policy, and the National Institute of Health, was originally scheduled for October 9, 1992, at the University of Maryland at College Park. The Conference brochure, stated:

[G]enetic research . . . gains impetus from the apparent failure of environmental approaches to crime—deterrence, diversions, and rehabilitation—to affect the dramatic increases in crime, especially violent crime, that this country has experienced over the past 30 years. Genetic research holds out the prospect of identifying individuals who may be predisposed to certain kinds of criminal conduct, or isolating environmental features which trigger those predispositions, and of treating some predispositions, and of treating some predispositions with drugs and unintrusive therapies.

GENETIC FACTORS IN CRIME: FINDINGS, USES & IMPLICATIONS (Conference Brochure Oct. 9-11, 1992) (brochure on file with author).

The firestorm of protest that attended Dr. Goodwin's remarks was extended to the Maryland conference. See, e.g., Dorothy Gillium, *Science or Social Control?*, WASH. POST, July 29, 1992, at B1; Lynn Duke, *Controversy Flares Over Crime, Heredity*, WASH. POST, Aug. 19, 1992, at A4. As a result, the National Institute of Health Director, Bernadine P. Healy, suspended a \$78,000 grant designated for the conference until there was clarification concerning the intent of the conference, and as a result, the conference was indefinitely postponed. Charles Babington, *U-Md. Cancels Conference on Genetic Link to Crime*, WASH. POST, Sept. 5, 1992, at A1; Philip J. Hilts, *U.S. Puts a Halt To Talks Tying Genes to Crime*, N.Y. TIMES, Sept. 5, 1992, at A1. Interestingly, the grant was canceled approximately six months later. David L. Wheeler, *NIH Cancels Grant for Controversial Conference on Genetic Basis of Crime*, CHRON. HIGHER EDUC., Apr. 28, 1993, at A6.

15. An example of the current fervor in genetic research is the “Human Genome Project” (HGP). This project is a worldwide research endeavor whose goal is to analyze the structure of human DNA and to determine the location of approximately 100,000 human genes. U.S. DEP'T OF HEALTH & HUMAN SERVICES, UNDERSTANDING OUR GENETIC INHERITANCE: THE U.S. HUMAN GENOME PROJECT (1992). The Department of Energy decided that the project was necessary in order to begin to understand the thousands of genetic diseases that afflict humans. The National Institute of Health has joined the project and is the major source of funds for all biomedical research in the United States. Darryl Macer, *Whose Genome Project?*, 5 BIOETHICS 184 (1991). In 1991, the United States contributed \$136 million to the HGP, with \$90 million coming from the National Institute of Health and \$46 million coming from the Department of Energy. Although the total cost of the HGP is currently unknown, it is estimated that the United States, who has so far contributed 50% of the total cost of the project, will contribute more than \$3 billion over the next 15 years. U.S. DEP'T OF HEALTH & HUMAN SERVICES, UNDERSTANDING OUR GENETIC INHERITANCE: THE U.S. HUMAN GENOME PROJECT (1992).

16. Rochelle C. Dreyfuss & Dorothy Nelkin, *The Jurisprudence of Genetics*, 45 VAND. L. REV. 313 (1992).

apartheid" based on political motivations, fear, and intimidation.¹⁷ Still others voiced concern that the premises of the Violence Initiative were at odds with foundational premises of our Constitution, that "peoples' actions are based on free will, rather than on biology or social pressures."¹⁸

One result of Dr. Goodwin's announcement concerning the intent and the rationale of the Violence Initiative was his dismissal as Director of the Alcohol, Drug Abuse, and Mental Health Administration and demotion to the position of Director of the National Institute of Mental Health. A spokesperson for Dr. Louis Sullivan, Secretary of the Department of Health and Human Services, said that the demotion rendered the "matter as closed," but significantly, the "matter" the spokesperson referred to was the disciplining of Goodwin for his intemperate remarks, not the Violence Initiative itself.¹⁹ Moreover, Goodwin's demotion was to the position of director of the agency responsible for funding the research associated with the Violence Initiative and, thus, did not suggest that his understanding and intent respecting the Violence Initiative was rejected.

Another result of the firestorm of protest that followed the Goodwin announcement was the appointment, in December 1992, of a panel to review the Violence Initiative.²⁰ With the assistance of various

17. CENTER FOR THE STUDY OF PSYCHIATRY, INC., *THE FEDERAL VIOLENCE INITIATIVE* 2-3 (1992).

18. Bob Sipchen, *A Cure for Violence?*, L.A. TIMES, Apr. 24, 1992, at E4.

19. Warren E. Leary, *Struggle Continues Over Remarks by Mental Health Official*, N.Y. TIMES, Mar. 8, 1992, at 34.

20. A "Blue Ribbon" panel met on November 10, 1992 and December 13-14, 1992. The panel issued the Report of the Secretary's Blue Ribbon Panel on Violence Prevention on January 15, 1993. Dr. Franklyn Jenifer, President of Howard University, chaired the panel. Members of the panel included: Dr. David Baines, a private medical practitioner and member of the Association of American Indian Physicians; Dr. Maisha Bennett, President of the Association of Black Psychologists; Dr. Lawrence Dark, Executive Assistant to the President for Equal Opportunity Programs; Dr. Jane Delgado, President and CEO of Coalition of Spanish Speaking Mental Health Organizations (COSSMHO); Dr. Wilbert Greenfield of the National Association for Equal Opportunity in Higher Education; Ms. Tessie Guillermo, Executive Director for the Asian American Health Forum; Dr. Lenneal Henderson of the William Donald Schaefer Center for Public Policy of the University of Maryland; Ms. Sadako Holmes, Executive Director of the National Black Nurses Association; Mr. Ivan Hopkins, President of the Howard University Student Association; Mr. Derrick Humphries of the Black Congress of Health, Law and Economics; Dr. H. Michael Lemmons, Congress of National Black Churches; Dr. Freda Lewis-Hall, Department of Psychiatry at Howard University Hospital; Ms. Ophelia Long, CEO and Administrator of Oakland Highland Hospital; Rev. Joseph Lowery, President of the Southern Christian Leadership Conference; Dr. Robert Murray, College of Medicine at Howard University; Dr. Edmund Pellegrino, Director of the Center for the Advanced Study of Ethics at Georgetown University; Dr. Deborah Prothrow-Stith, Associate Dean of Harvard School of Public Health and former Commissioner of Public Health for the State of Massachusetts; Ms. Marla Robinson, Research Associate for the Joint Center for Political and Economic Studies; Dr. David Satcher, President of Meharry Medical College; Dr. Marian Secundy, Professor and Director of the Program in Medical Ethics at Howard University; Dr. Mitchell Spellman, Dean Emeritus for International Projects at Harvard University Medical School; Dr. Henry Tomes, Executive Director of Public Interest Directorate for the American Psychological Association; Dr. Reed Tuckson, President of Charles R. Drew University; and Dr. Ronald Walters, Chairman

Department of Health and Human Services (DHHS) staff experts, the panel reviewed each of the 224 DHHS abstracts of research related to anti-social, aggressive, and violent behavior. According to the panel's report issued less than a month later in the waning days of the Bush administration, there was no evidence to support the allegations and suspicions levied against DHHS, subsequent to Dr. Goodwin's announcement.²¹ The panel concluded that a focus on violence as a public health problem was appropriate,²² and determined that none of the studies sought to establish a genetic link between race and violent behavior,²³ thus, effectively exonerating the Violence Initiative, if not the words of Dr. Goodwin.

Even so, under a new Clinton Administration, the Violence Initiative was canceled as a coordinated effort, amidst continuing doubts as to the integrity and legitimacy of the endeavor.²⁴ Significantly, however, what was canceled was only the \$400 million effort at coordination that constituted the Violence Initiative, and not the research efforts the Violence Initiative was meant to coordinate.²⁵

While inquiry in and of itself should never be threatening, the inquiry to have been conducted under and coordinated by the Violence Initiative cannot be separated from the attitudes of Frederick Goodwin, who so eloquently and honestly explained the focus of the program. Nor can it be separated from the attitudes of persons who share Goodwin's view, and who would seek to shape the research that underlay the Violence Initiative to serve those attitudes. Nor can the Violence Initiative be separated from the attitudes of our society as a whole, attitudes that are shaped by

of the Department of Political Science at Howard University. See DEP'T OF HEALTH AND HUMAN SERVICES, REPORT OF THE SECRETARY'S BLUE RIBBON PANEL ON VIOLENCE PREVENTION 14-15 (Jan. 15, 1993).

Additionally, the panel was assisted by department participants from the Department of Health and Human Services, the Administration for Children and Families, the Centers for Disease Control, and various member agencies of the National Institutes of Health, including the National Institute of Child Health and Human Development, the National Institute of Drug Abuse, the National Institute of Alcoholism and Alcohol Abuse; as well as several other agency representatives. *Id.* at 16.

21. See *id.* at 2.

22. *Id.*

23. *Id.*

24. It should be noted, however, that only the coordinated inter-agency plan has been canceled. Various other agencies continue many types of research on the origins of violent behavior. See discussion *supra* note 3; see also Peter R. Breggin & Ginger Ross Breggin, *The Federal Violence Initiative: Threats to Black Children (and Others)*, 24 PSYCHIATRY DISCOURSE 8, 10 (Apr. 1993) (discussing a study by the National Research Counsel entitled, "Understanding and Preventing Violence," which was funded by the Centers for Disease Control, the Justice Department, and the National Science Foundation).

25. Laura Parker, *Bias Charges Halt Study on Violence*, GANNETT NEWS SERVICE, May 20, 1993. Even so, officials of the Clinton Administration were said to have "bowed to pressure from Black community groups and members of Congress and dropped [the] \$400 million Youth Violence Initiative." Karen Schneider, *Government Continues Its Research Into Causes of Violence*, PHILADELPHIA INQUIRER, May 21, 1993, at A12.

society's history and culture. Thus, this Article will show that the advent of the federal Violence Initiative threatened the personhood and the voice of African-Americans, and more particularly of African-American children, by fostering biological and reductionist theories of genetic linkage between criminally-violent behavior and inner-city youth. Furthermore, it decontextualized and dehistoricized the idea of violence, and devalued the worth of the African-American child by reinforcing gender and stereotypical concepts of African-American women and men.

The purpose of this Article is not to focus on the scientific and research data or techniques used by the Department of Health and Human Resources and other agencies or institutions conducting genetic and other research associated with the Violence Initiative. Rather, this Article will give historical context to the genetic essentialism and race-based ideology inherent in the Violence Initiative. This context will show the racially discriminatory purpose that underlies the Violence Initiative. Positing a disproportionate impact of the programs to be fostered by the Violence Initiative,²⁶ this context questions the wisdom of the Violence Initiative as governmental policy and the application of a strict scrutiny standard in judging the constitutional validity of the Violence Initiative.

This Article is divided into six parts. Part I is this introduction. Part II presents a summary of relevant equal protection principles that emanate from the Equal Protection Clause of the Fourteenth Amendment²⁷ and the Due Process Clause of the Fifth Amendment.²⁸ Part III outlines the Violence Initiative as presented by Dr. Goodwin, and distinguishes the program from more prevalent models of sociological intervention. Parts IV and V detail the historical context in which the Violence Initiative must be seen. The concluding part of the Article, Part VI, will offer a cautionary perspective on the issues and questions raised by the program.

II. EQUAL PROTECTION AND THE IMPORTANCE OF INTENT

The Equal Protection Clause of the Fourteenth Amendment has been seen as protecting Blacks from discriminatory state action since its earliest construction.²⁹ The anti-discrimination directive of the Equal Protection

26. See *supra* note 12.

27. The first section of the Fourteenth Amendment includes the Equal Protection Clause: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

28. In pertinent part, the Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law" U.S. CONST. amend. V.

29. See, e.g., *Strauder v. West Virginia*, 100 U.S. 303 (1879); *The Slaughter-House*

Clause was extended beyond its intended subject, the states, to the federal government in *Hirabayashi v. United States*³⁰ and *Korematsu v. United States*,³¹ two cases that ironically condoned racial discrimination by the federal government.³²

In condoning a curfew imposed against persons of Japanese descent during World War II, *Hirabayashi* recognized that while the Fifth Amendment, which limits federal governmental action "contains no equal protection clause," it nonetheless restrains racially discriminatory legislation "as amounts to a denial of due process."³³ The Court went beyond this recognition in *Korematsu*, to state the standard for testing such discrimination. While government-imposed discrimination would be deemed "immediately suspect," it would not necessarily be unconstitutional.³⁴ Courts, subjecting such discrimination "to the most rigid scrutiny," may find racial discrimination justified, by "[p]ressing public necessity," not by racial antagonism.³⁵ Thus, the Supreme Court enunciated the principle that federal "[c]lassifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect."³⁶

Assuming the existence of a disproportionate racial impact, equal protection analysis of policies that classify on the basis of race requires a showing of discriminatory purpose in order to trigger strict scrutiny.³⁷

Cases, 83 U.S. (16 Wall.) 36 (1872). The shameful history of equal protection under the "separate but equal" mandate of *Plessy v. Ferguson*, 163 U.S. 537 (1896), is a development that postdates the early understanding of the Equal Protection Clause. *Plessy v. Ferguson* was overruled subsequently by *Brown v. Board of Educ.*, 349 U.S. 294 (1954), bringing the anti-discrimination understanding of the clause full circle.

30. 320 U.S. 81 (1943).

31. 323 U.S. 214 (1944).

32. In *Hirabayashi*, the Supreme Court upheld the conviction of an American citizen of Japanese ancestry who violated a curfew imposed on all persons of Japanese ancestry within a targeted area on the west coast. 320 U.S. at 83.

In *Korematsu*, the Supreme Court upheld the conviction of another American citizen of Japanese descent who violated an order excluding all persons of Japanese descent from California and sending them to concentration camps in the interior of the nation. 323 U.S. at 216-23.

33. *Hirabayashi*, 320 U.S. at 100.

34. *Korematsu*, 323 U.S. at 216.

35. *Id.*

36. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). The rule of strict scrutiny is applied to state racial discrimination as well:

[State discrimination] must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications "constitutionally suspect" and subject to the "most rigid scrutiny," and "in most circumstances irrelevant" to any constitutionally acceptable legislative purpose.

McLaughlin v. Florida, 379 U.S. 184, 191-92 (1964) (citations omitted).

37. *Hunter v. Underwood*, 471 U.S. 222, 227-28 (1985); *Washington v. Davis*, 426 U.S.

Though a disproportionate impact may, by itself, be a valuable evidentiary tool in establishing discriminatory purpose, disproportionate impact does not suffice to trigger the strong showing of governmental necessity required under a strict scrutiny analysis.³⁸ Proof of discriminatory motive may be discerned by evaluating all facts relevant to the policy-making process,³⁹ however, “[p]roving the motivation behind official action is often a problematic undertaking.”⁴⁰ The impermissible motive of the policy-making body need not be the sole motive, for a racially discriminatory motive “is not just another competing consideration” in the search for legislative intent.⁴¹ Relevant concerns in finding discriminatory purpose might be the historical circumstances surrounding the policy,⁴² legislative history,⁴³ and significantly, whether the particular policy “bears more heavily on one race than another.”⁴⁴

Yet, these determinants are informed by and require a finding of “conscious” motive in decision-making. Dr. Goodwin explained, and the Blue Ribbon panel found, that conscious racial motive is lacking in both the substance and the implementation of the Violence Initiative. Presumably then, if racially discriminatory intent is to be found, it must be an intent reflective of an “unconscious racism,”⁴⁵ a factor that, if proven, would illuminate and inform the societal context from which the Violence Initiative is drawn and on which it should be evaluated.

229, 247-48 (1976).

38. *Hunter*, 471 U.S. at 227-28. The Court explained more fully in *Davis*:

It is . . . not infrequently true that the discriminatory impact . . . may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds. Nevertheless, we have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. Standing alone, it does not trigger the rule . . . that racial classifications are to be subjected to the strictest scrutiny and are justifiable only by the weightiest of considerations.

426 U.S. at 242.

39. *Washington*, 426 U.S. at 242.

40. *Hunter*, 471 U.S. at 228.

41. *Arlington Heights v. Metropolitan Hous. Dev.*, 429 U.S. 252, 265 (1977).

42. *Id.*

43. *Id.*

44. *Washington*, 426 U.S. at 242.

45. Professor Charles Lawrence suggests that the formulation of the issue of whether a facially neutral action is “intentionally and unconstitutionally or unintentionally and constitutionally discriminatory” is a “false dichotomy.” Charles R. Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322 (1987). “We do not recognize the ways in which our cultural experience has influenced our beliefs about race or the occasions on which those beliefs affect our actions. In other words, a large part of the behavior that produces racial discrimination is influenced by unconscious racial motivation.” *Id.*

Professor Charles Lawrence has pointed out that unconscious racism as an evaluative tool for measuring discriminatory purpose has not found explicit approval from the courts as a basis for the finding of discriminatory intent.⁴⁶ Testing for unconscious racism is a valuable tool for evaluating intent in the case of policies such as the Violence Initiative, because such testing exposes the policy's "cultural meaning."⁴⁷ The concept of unconscious racism forms the basis for a broader understanding of the constitutional infirmity of policy-making based on images of racial difference and appeals to the presumption of inferiority, such as those on which Dr. Goodwin based his introduction of the Violence Initiative.

Testing for unconscious racism, then, expands the possibility of distinguishing policies that are constitutionally sound for their basis in legitimate legislative choice as to "public necessity," from those based simply on "racial antagonism."⁴⁸ Such testing also provides a basis for examining the Violence Initiative, apart from a constitutional purpose, for its wisdom as a matter of public policy.

III. PLANNED OBSOLESCENCE: THE VIOLENCE INITIATIVE AND DISPOSABLE BLACK CHILDREN

*"[R]oughly half of them survive to adulthood. The other half die by violence. That is the natural way of it for males"*⁴⁹

46. The constitutional standards for determination of discriminatory purpose, as currently set out by the courts, require proof of conscious or intentional motivation in order for a policy that establishes a classification based on race to be violative of equal protection constraints. Lawrence, *supra* note 45, at 323. The unfortunate result of the current evaluative standard as recognized by Professor Lawrence is the disregard of "both the irrationality of racism and the profound effect that the history of American race relations has had on the individual and collective unconscious." Lawrence, *supra* note 45, at 323.

47. The concept of "cultural meaning" infuses a new element into the evaluation of race-based behavior. The cultural meaning of a behavior would access the "collective unconscious" that cannot be observed directly:

This test would . . . evaluate governmental conduct to determine whether it conveys a symbolic message to which the culture attaches racial significance. A finding that the culture thinks of an allegedly discriminatory governmental action in racial terms would also constitute a finding regarding the beliefs and motivations of the governmental actors: the actors are themselves part of the culture and presumably could not have acted without being influenced by racial considerations, even if they are unaware of their racist beliefs. Therefore, the court would apply strict scrutiny.

Lawrence, *supra* note 45, at 324.

Professor Richard Delgado, however, recognizes difficulty in applying Professor Lawrence's model, in that society has "defined racial reality in such a way that relatively few acts are seen as racist." Professor Delgado would instead seek to find a model that would change the legal culture as opposed to searching out the cultural meaning of governmental action. Richard Delgado, *Shadowboxing: An Essay on Power*, 77 CORNELL L. REV. 813, 823 (1992).

48. Cf. *Korematsu v. United States*, 323 U.S. 214 (1944).

49. Goodwin Mental Health Address, *supra* note 1, at 119.

The Violence Initiative identified the increase in the number of violent crimes and homicides within the last twenty-five or thirty years as a "public health epidemic" and a "public health" emergency.⁵⁰ Instead of looking to the cultural, social, educational, and economic conditions surrounding African-Americans, the strongest images of the Violence Initiative seized upon the psychic theme of African-Americans and other people of color as genetic units that embody the "animal savage" and the "violent other"—individuals whose social and economic circumstances are defined by their identity.⁵¹ The very first strains of the Violence Initiative we heard revealed racial antagonism rather than necessitous intervention.

Nonetheless, the Violence Initiative was offered as a sensible way to address the problem of violence in America, an attempt to "get down to [the] root causes of why people don't have hope."⁵² The most general criticism of the Violence Initiative is that it would have acted to distract societal attention from, and to vitiate societal will to continue with, approaches to remedy the social ills of inner-city life. These social ills, such as poverty, unemployment, poor educational opportunities, and racism,⁵³ are macro-factors that concern society at large, and not only the individual immediately affected.⁵⁴ When the focus is on the individual, a "victim fault" resolution frame of reference arises and society may respond by rejecting any further group responsibility for the individual.⁵⁵

50. Goodwin American Psychiatric Address, *supra* note 9. Additionally, the Centers for Disease Control has announced that violence in youthful populations has reached "epidemic" proportions. Ellen K. Coughlin, *Violence and America's Young: Psychologists' Panel Urges Research on Combating Aggressive Behavior*, CHRON. HIGHER EDUC., Sept. 2, 1992, at A7. The report of the American Psychological Association's Commission on Violence and Youth states that the odds of dying by violence in America are 1 in 496 for White females, 1 in 205 for White males, 1 in 117 for Black females, and 1 in 27 for Black males. *Id.*

51. This theme is identified *infra* Part IV.C.

52. See Sipchen, *supra* note 18, at E4 (quoting James O. Mason). The Initiative's response is an urgent one. The tone is characteristic of conservative policies that criticize the social programs of the 1960's and 1970's, which attempted to address the problems of poverty directly. The programs most often attacked are Food Stamps, Head Start, and Job Corps. AN ENDANGERED SPECIES, *supra* note 10, at 300. The position of the Violence Initiative is that the focus of previous intervention has been misdirected. James O. Mason, Assistant Secretary for Health, Department of Health and Human Services, believes that it is worthy for society to consider the problems with education, employment, and poverty. He states, however, that public health services are "not [just] going to sit there and do nothing. If we sit around and wait, the criminal justice people will get these people after they've been involved in violence or homicide." Sipchen, *supra* note 18, at E1 (quoting James O. Mason).

53. PETER R. BREGGIN, BEYOND CONFLICT 153 (1992).

54. *Id.*

55. *Id.* Howard L. Kaye, a professor of sociology at Franklin and Marshall College, suggests that the result of acceptance of the scientific designations of genetic sources of behavioral traits, even when the suggestions are well in advance of the actual scientific research, "will be a transformation of how we understand ourselves: from moral beings, whose character

Sociological theories of the origins of crime have traditionally focused on the social, economic, or cultural causes of crime, including macro-environmental as well as micro-environmental factors as targets of policy intervention.⁵⁶ In examining influences on participation in criminal activity, sociologists have traditionally focused on macro-environmental factors such as poor housing, low educational attainment, poor schools, high-crime neighborhoods, easy access to guns, drugs, alcohol, and loss of community support.⁵⁷ Further, sociologists have looked to micro-environmental factors that center on the effect of low educational and economic levels of parents, abusive or even cold and rejecting parents, family member drug or alcohol abuse, female-headed households, and parents or siblings who possess criminal records.⁵⁸

In order to remedy the perceived likelihood of participation in criminal activity, state and federal programs have previously sought to remedy the societal ill that is thought to be primarily responsible for many of the macro- and micro-factors associated with crime—poverty. The Violence Initiative discounted poverty and other associated factors as significant causes of violent criminal behavior and, thus, as the focus of intervention. Rather, the individual vulnerability to both macro- and micro-environmental factors would have been the focal point of intervention.⁵⁹

Many of the research projects to have been sponsored by the Violence Initiative focus on “individual vulnerability factors”—factors that increase an individual’s chances of committing violent crime. These factors include some that are strictly environmental, such as neuropsychiatric impairment from head injury, and some that may be environmentally induced or may have a genetic basis, such as attention deficit disorder, clinical depression, low IQ, poor impulse control, and conduct disorder.⁶⁰

The suggestion to have been tested by the Violence Initiative, then, is whether children of the inner city are likely to become violent because of an inherent vulnerability, an unalterable state of being. Successful identification of behavioral patterns that indicate such a vulnerability would allow for early intervention. The target group for intervention

and conduct is largely shaped by culture, social environment, and individual choice, to essentially biological beings.” David L. Wheeler, *An Escalating Debate Over Research That Links Biology and Human Behavior*, CHRON. HIGHER EDUC., June 24, 1992, at A7 (quoting Howard L. Kaye).

56. Goodwin American Psychiatric Address, *supra* note 9.

57. Goodwin American Psychiatric Address, *supra* note 9.

58. Goodwin American Psychiatric Address, *supra* note 9.

59. Goodwin American Psychiatric Address, *supra* note 9.

60. According to Dr. Frederick Goodwin, the questions are no longer biology versus behavior, or biology versus psychosocial, or nature versus nurture. The questions are how do psychosocial forces and biological factors interact with each other and can we find experimental ways to tear apart the relative contributions. Goodwin American Psychiatric Address, *supra* note 9.

would be that group known in the sociological literature to be at high risk: those in the low socio-economic class living in high-impact urban areas, primarily African-American and other children of color.⁶¹

Initial estimates of the Violence Initiative were that there are at least 100,000 children who could have been targeted for intervention.⁶² In his introduction of the program, Dr. Goodwin never specifically mentioned African-American children or other children of color, but since these children occupy the "high impact inner city" in disproportionate numbers to any other group, the ultimate conclusion is that the targeted children are, indeed, African-American and other children of color.⁶³ Given the presence of this race-based correlate, the Violence Initiative was capable of the inference that the information and work it spawned may have been used as an indicator that inner-city African-American children, were, as Dr. Goodwin suggested, a "hyperaggressive," "hypersexual" lot. It suggests that their behavior is not defined by culture or necessity, but instead by an evolutionary imperative that both responds to and, by implication, also demands a social atmosphere free of the "civilizing" influences of "social controls."⁶⁴ Thus, the inference would be that these children are needful of intervention by the larger society acting through its government. A possible plan of implementation, as disclosed by Dr. Goodwin, illustrates this point.

It was suggested by Dr. Goodwin that very young children could best be targeted for intervention. Children as young as two or three who demonstrate "early irritability and uncooperativeness," may be exhibiting vulnerability to later violent behavior and, therefore, may be subject to treatment.⁶⁵ It seems a startling proposition that when children have barely learned to walk and speak, their dangerous propensities for deviant behavior could be marked, and that perceptions of them in the eyes of society should be solidified. Yet, Dr. Goodwin suggested that children actually slated for intervention be identified via a "triage" approach.⁶⁶

Triage is a term used in describing the "sorting of or allocation of treatment to patients and especially battle and disaster victims according to a system of priorities designed to maximize the number of survivors."⁶⁷ The idea is that those who require immediate life-saving attention get it, those whose lives are not at risk from their wounds wait,

61. Goodwin Mental Health Address, *supra* note 1; Goodwin American Psychiatric Address, *supra* note 9.

62. Goodwin Mental Health Address, *supra* note 1, at 119.

63. Goodwin Mental Health Address, *supra* note 1; Goodwin American Psychiatric Address, *supra* note 9.

64. Goodwin Mental Health Address, *supra* note 1, at 119-20.

65. Goodwin American Psychiatric Address, *supra* note 9; Dr. Peter Breggin, Testimony before the Violence Initiative Panel, The Congressional Caucus Legislative Weekend (Sept. 25, 1992) (transcript on file with author) [hereinafter Breggin Testimony].

66. See Goodwin American Psychiatric Address, *supra* note 9.

67. WEBSTER'S NEW COLLEGIATE DICTIONARY 1259 (9th ed. 1987).

and those whose lives cannot be saved are allowed to die. The concept of triage is a significant choice of terms for identifying children to be subjected to intervention. Indeed, if one must decide which children are worth saving depending on probability of survival, one must also necessarily conclude that there are children, even as early as two or three years of age, who are incapable of survival and thus who are expendable.

The responsibility incurred in making such triage decisions is great. The results of one's decisions are significant for the affected individuals. In medical situations, these decisions are put in the hands of specially trained doctors or nurses.⁶⁸ Under the Violence Initiative, however, a significant portion of this discretion for intervention could have been placed in the hands of elementary school teachers. Teachers, it was suggested, would be charged with the responsibility of identifying as many as twelve to fifteen percent of the children in their classrooms in the inner city who, in their estimation, displayed "disruptive behavior."⁶⁹ At this level, the intervention suggested might involve telephone interviews with the parents, and perhaps with mental health officials, in order to determine who should receive treatment. The level of intervention would gradually increase, depending on the severity of the potentially violent behavior observed.⁷⁰ Another possible intervention involves treatment of a student's entire family in an attempt to teach effective parenting skills.⁷¹ These seemingly benign strategies are potentially ridden with culturally-based assumptions of family composition, family and other interpersonal interaction, and appropriate parenting skills.⁷²

Under Dr. Goodwin's scenario, many learning disabled children could be placed into Violence Initiative intervention programs because these children often display impulsive behavior, a vulnerability factor as identified by the Violence Initiative.⁷³ Presumably, the children already would have been identified within their school systems, and the various coordinated strategies would "leverage" this factor and recommend

68. See generally Gunnar B. Stickler, *The Pediatrician as A Consultant*, AM. J. DISEASES CHILDREN 73 (Jan. 1989); Sidney D. Watson, *Health Care in the Inner-City: Asking the Right Question*, 71 N.C. L. REV. 1647 (1993).

69. Goodwin American Psychiatric Address, *supra* note 9; see also Breggin Testimony, *supra* note 65, at 2.

70. Goodwin American Psychiatric Address, *supra* note 9; see also Breggin Testimony, *supra* note 65, at 2.

71. Behavior modification techniques, as conceived by the Violence Initiative, would include teaching "parents ways to assess and to monitor and to teach them how to use immediate and contingent and effective discipline for the antisocial behavior and consistent rewards for prosocial behavior. . . . It requires both positive and negative feedback. . . . [It also includes] social skills training for the child and academic tutoring." Goodwin American Psychiatric Address, *supra* note 9, at 13.

72. HARRIETT P. MCADOO & JOHN L. MCADOO, *BLACK CHILDREN: SOCIAL, EDUCATION AND PARENTAL ENVIRONMENTS* (1985).

73. Goodwin American Psychiatric Address, *supra* note 9.

treatment with routine clinical treatments for reprobated behaviors associated with the learning disabilities.⁷⁴

In many areas, African-American children are disproportionately represented in the population of children ushered into special education classes.⁷⁵ Critics of special education services view this phenomenon as indicative of the failure of educators to meet the culturally diverse needs of these children. Arguably, these children need *different* educational

74. Goodwin American Psychiatric Address, *supra* note 9. The September 1984 Harvard Medical School Health Letter describes "learning disability" as a term that describes a handicap that interferes with someone's ability to store, process, or produce information. The Individuals With Disabilities Education Act of 1990 (IDEA), formerly The Education for All Handicapped Children Act of 1975 (EAHCA), states that a child with specific learning disabilities is one who has "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations." 20 U.S.C. § 1401(a)(15) (1990). "Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia." *Id.* Children so affected are entitled to a free and appropriate education. 34 C.F.R. § 104.33 (1993). Individual states may qualify for federal funding by establishing procedures that assure learning-disabled children are educated with children who are not learning-disabled (i.e., the education must occur in the least restrictive means). 34 C.F.R. § 300.550 (1993).

75. Congress has concluded that children of color are disproportionately identified and placed in special education programs. The Individuals With Disabilities Education Act of 1990 (IDEA), formerly the Education for All Handicapped Children Act, P.L. 94-142, expressed this legislative concern as follows: "Poor African-American children are 3.5 times more likely to be identified by their teacher as mentally retarded than their White counterparts. . . . Although African-Americans represent 12% of elementary and secondary enrollments, they constitute 28% of total enrollments in special education." 20 U.S.C. § 1409(j)(1)(B)(iii)-(iv) (1990).

The New York City School District is representative of the kind of area that has possibly been targeted for school-based intervention by the coordinated initiative. Advocates for Children of New York, Inc., an organization founded in 1970 to secure equal education opportunities, promote equality education services, and overcome school failures in New York City schools, indicates that:

African-American students, unlike their Latino and White counterparts, represent a disproportionately large number of special education placements. African-American students constitute only 38% of the general education population, but make up 41% of the special education population. Conversely, Latino and White students account for 35% and 20%, respectively, of the general education population and 34% and 19% of the special education population.

ADVOCATES FOR CHILDREN OF NEW YORK, INC., SEGREGATED AND SECOND-RATE: "SPECIAL" EDUCATION IN NEW YORK (1992).

They also believe, however, that Latino students may soon constitute a greater, and a disproportionate share of special education students. *Id.* Between 1985 and 1990, the number of Latino males in special education programs jumped 11% while the number of African-American males in special education programs climbed 5%. At the same time, the number of White males in special education programs decreased by 14%. Together, African-American and Latino students comprised over 80% of students in all special programs. *Id.* Critics of the Violence Initiative fear that children of color will experience a similar disproportionate representation in the group of children referred for intervention. Breggin Testimony, *supra* note 65.

services and may not require special education at all.⁷⁶ Moreover, special education referrals have the effect of "re-segregating" the inner-city classrooms through the actions of teachers who are not pedagogically equipped to deal with the general educational needs of these children.⁷⁷ These children are referred to special education programs that do not provide statutorily mandated educational services, but are instead used as a dumping ground for "problem children."⁷⁸ Proponents of the Violence Initiative assert that some of its programs would provide teachers with another tool to help inner-city children. Skeptics, however, view the Violence Initiative proposal as a mechanism to scapegoat inner-city children for the social and economic ills that characterize their lives. Moreover, they suggest that these children would face not only increased referral to special education services, but also to the mental health system, with the further prospect of drug intervention.⁷⁹

Another suggestion was that older children require a different kind of intervention. Those children already in particularly disruptive environments could go to day camps that "would give them more of a chance to be in healthy environments for larger parts of the day."⁸⁰ However, children with "overt psychiatric or neurological problems," would be referred for "standard treatment."⁸¹ The standard treatment

76. ADVOCATES FOR CHILDREN, see *supra* note 75.

77. ADVOCATES FOR CHILDREN, see *supra* note 75.

78. ADVOCATES FOR CHILDREN, see *supra* note 75.

79. Dr. Goodwin speaks of the need in some children, to correct imbalances in the serotogenic neurotransmitter system. Goodwin American Psychiatric Address, *supra* note 9. Current psychiatric theory and practice treat these imbalances with drugs and according to Dr. Peter Breggin, not only Ritalin, but also Prozac and Zoloft. Breggin Testimony, *supra* note 65. Dr. Peter Breggin cautions that placing the screening mechanism in the hands of classroom teachers would:

scapegoat children for America's problems and excuse society from facing the true causes of the crisis in the inner cities—such as racism, poverty, hunger, inadequate or non-existent health care, an oppressive welfare system, and the decline of schools.

The [V]iolence [I]nitiative would place a large portion of Black children under psychiatric institutional control, adding them to the vast numbers (50% or more) of older youth and adults already subjected to the criminal justice system. . . . [B]lack children and young men will be subjected to institutional apartheid.

DR. PETER BREGGIN, REPORT FROM THE CENTER FOR THE STUDY OF PSYCHIATRY: THE FEDERAL VIOLENCE INITIATIVE 2 (1992).

80. Goodwin American Psychiatric Address, *supra* note 9.

81. Goodwin American Psychiatric Address, *supra* note 9, at 17. Presumably health care officials would perform the task of referral, however, it seemed that initial referrals would have come from the classroom setting. The psychiatric or neurological problems spoken of include depression and conduct disorder in which individuals "have more depressive symptomology as they grow up." Also, hyperactive and attention-deficit disordered children, with conduct disorder, have "under-treated or untreated depressive disorders and since depression has many effective treatments it's a shame to see these kids drifting into the criminal justice system when they might have been treated early." Goodwin American Psychiatric Address, *supra* note 9, at 17. The standard treatment involves drug treatment.

suggested might involve drug therapy as a solution to the disruptive behaviors of the children identified for intervention.⁸²

Inner-city children who had previously been diagnosed as learning disabled would have been particularly vulnerable to this intervention. These inner-city children are often determined by school-based testing to be impulsive and attention deficit disordered; traits which have been identified as individual vulnerability factors.⁸³ The current clinical methods for treating these conditions involve the administration of psychostimulants such as Ritalin.⁸⁴ Drugs such as these are currently administered to thousands of children each year to adjust and quiet their behavior in school environments, as well as in the institutional settings.⁸⁵

Each of these potential interventions, particularly drug intervention, raises issues and concerns related to privacy, consent, and coercion for the children involved and their families.⁸⁶ Interventions based on micro-environmental factors present the need, therefore, to justify both the benign intent of their implementation and their status as the only effective and the least intrusive alternative. Parts IV and V of this Article posit that the cultural meaning of the Violence Initiative is infused with and advances unconscious racial images that render the plan suspect. The plan is suspect independently, as a matter of public policy, and suggests a discriminatory intent that bespeaks the necessity of strict scrutiny.

82. Breggin Testimony, *supra* note 65, at 2-3.

83. Goodwin American Psychiatric Address, *supra* note 9.

84. Ritalin is one of the most commonly prescribed drugs for children. It is usually given to children diagnosed as attention-deficit disordered (ADD) or hyperactive. DR. PETER BREGGIN, TOXIC PSYCHIATRY 303-04 (1991).

85. Estimates on Ritalin usage in the United States exceed five hundred thousand children per year and sometimes reach one million. "A January 16, 1989 'Time' magazine report puts the figure for Ritalin-treated children at seven hundred thousand and cites NIMH [the National Institutes of Mental Health] predictions of one million by the early 1990's." *Id.*

86. Complicated ethical issues regarding coercion and consent arise. What if parents refuse intervention? Can compliance be ordered? Will children be allowed to attend school if intervention is refused? Who has access to the information gathered? What about the stigma to the young children of being branded as "potentially violent" in the minds and perceptions of teachers and administrators? Can compliance be coerced by conditioning reception of federal funds or entitlements such as Aid for Families with Dependent Children and housing? If the gene pool is indeed deteriorating, then perhaps women of color should be encouraged to be sterilized in order to reduce the number of births of potentially violent children. It is interesting to note that women of color have previously been subjected to disproportionate numbers of involuntary sterilizations pursuant to federal governmental policies. See generally Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1442-43 (1991).

The thought of preventing male births as a solution to inner-city violence was raised sarcastically by one mental health official and dismissed. James Breiling, Chief of the Perpetrators of Violence Research Program, Violence and Traumatic Stress Research Branch, Division of Applied and Services Research of the National Institute of Mental Health stated in an interview: "If we wanted to do the simple thing, it would be to prevent the birth of males. . . . But that's not going to happen. . . . Are we going to put Lithium in the drinking water of Watts? . . . No. That's absurd. . . . Are there kids who have behavioral problems linked to depression? Yes. Should we give the appropriate medications? Absolutely." Sipchen, *supra* note 18, at E1.

IV. HISTORICAL CONTEXT

History suggests that African Americans and other people of color, who comprise the overwhelming majority of the inner city,⁸⁷ should remember the lessons taught regarding other "scientific findings" that have been offered in the past to justify "intervention" on their behalf. Dr. Goodwin attributed his remarks in favor of the Violence Initiative to a momentary lapse in judgment. This lapse, he said, resulted in a lesson learned "all too painfully that the absence of malice or bad intentions does not excuse the insensitivity of what" was said.⁸⁸

The imagery created by the language he used played heavily to some of the most stark and prevalent stereotypes about African-American men, women, and children. These stereotypes have been the cornerstone of race relations, race related public policy, and private action in this nation. Just as the Violence Initiative cannot be separated from the imagery its introduction evoked and the stereotypes its premises reinforced, it cannot be separated from this nation's history based on such stereotypes.

A. Images of Inferiority in the National Psyche

*"[I]f some of the loss of social structure in this society, and particularly within the high impact inner city areas, has removed some of the civilizing evolutionary things that we have built up"*⁸⁹

Slavery is often a useful point of reference in a discussion of institutions, laws, and policies that have been oppressive to African-Americans. It forms part of the cultural meaning of the Violence Initiative. Slavery, along with its socially and economically supportive structure and the images it created as a tool to maintain the emotional and psychological dependence of slaves, is a paradigm for "what White America has done, a constant reminder of what White America might do."⁹⁰ Because the entire history of race relations in this nation has its genesis in the institution of African slavery, this history of slavery serves as a referential sourcebook for race relations and provides a context for understanding the text of Dr. Goodwin's introduction.

Yet, while the institution of slavery created racist images of African-Americans, it was based on racist images as well. In *White Over Black: American Attitudes toward the Negro, 1550-1812*, Winthrop Jordan has convincingly documented a predisposition of the English and, thus, also early Anglo-Americans, to racism.⁹¹ In part, this predisposition was

87. See discussion *supra* note 10.

88. Michael Isikoff, *HHS Official Apologizes for 'Male Monkey' Remarks*, WASH. POST, Feb. 22, 1992, at A5.

89. Goodwin Mental Health Address, *supra* note 1, at 120.

90. BELL, *supra* note 10, at 12.

91. WINTHROP JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO*, 1550-

based on religion. Biblical teachings taught that Africans, with their dark, nearly black skin, bore the mark of Noah's son Ham who was cursed by God for his sins.⁹² This predisposition also was based on the unfortunate contrast of the meaning of the word black—evil, dirty, unwholesome, unclean, threatening, and immoral—with that of the word white—good, pure, wholesome, undefiled, and unsullied.⁹³ Moreover, while the appearance of Africans as black catered to this predisposition, England's initial awareness of Africans reinforced the predisposition that not only were Africans black, they resembled the newly discovered apes of Africa.⁹⁴ Africans were presumed to be human. However, they were perceived to be a lower order—animal in nature, possessed of the violent and sex driven spirit to which animals were heir.⁹⁵

This nation is an heir to the racial attitudes of the English who pioneered slavery in America. Slavery is the paradigm for the concept of a violence that was religiously sanctioned, economically and politically expedient, and socially acceptable. It was never thought of by its proponents or even many of its detractors as being aberrational in character or demonstrating a defect in the constitution of the perpetrators. The process of slavery in America required not only the control of the bodies of captured Africans, but also the capture of their minds and spirits. To create slaves of persons who by nature were free, required the creation of new mentality, a tabula rasa, one fresh for imprinting messages of unworthiness, non-humanness, and inferiority. To this end, it was important to destroy all aspects of culture and individuality possessed by those captured and enslaved.⁹⁶ The stripping away of dignity, identity, status, language, and heritage was a necessary element of the process of deculturation and seasoning.⁹⁷ Thus, violence was a useful device, a valuable tool in this process of shaping, developing, and preparing a proper slave.

1812, at 3-43 (1968). This is not to say that this predisposition accounts solely for the English adoption of slavery in the New World or for the English experience with slavery. Nor is it to account for the similarities and differences of slavery under English colonies with that under other European powers. See FRANK TANNENBAUM, *SLAVE AND CITIZEN: THE NEGRO IN THE AMERICAS* (1947); DAVID B. DAVIS, *THE PROBLEM OF SLAVERY IN WESTERN CULTURE* (1966); *SLAVERY IN THE NEW WORLD: A READER IN COMPARATIVE HISTORY* (L. Foner and E. Genovese eds. 1969); CARL N. DEGLER, *NEITHER BLACK NOR WHITE: SLAVERY AND RACE IN BRAZIL AND THE UNITED STATES* (1971).

92. JORDAN, *supra* note 91, at 17-19.

93. JORDAN, *supra* note 91, at 7-11.

94. JORDAN, *supra* note 91, at 28-32.

95. JORDAN, *supra* note 91, at 28-43.

96. BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 19 (1981); see also Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systematic Social Ills?*, 77 CORNELL L. REV. 1258, 1262-63 (1992).

97. HOOKS, *supra* note 96.

The cruel and dehumanizing experience of Africans during the Middle Passage set the stage for what would follow during their tenure as slaves. This experience raises questions as to the nature of the minds, hearts, and souls of the perpetrators of the Middle Passage, for the violence of this experience was characterized not by impulse or lack of control, but by careful planning, frugal investment, generational agreement, and color of law.

Torture aboard ship was a commonplace instrument of subjugation. Slaves were branded with the mark of the owner. Men, women, and children alike carried this ultimate symbol of the violence of dominance.⁹⁸ Whippings aboard ship during the crossing from Africa, as well as later on land, were an instrument of control.⁹⁹ This control extended to pregnant women aboard ship. Not only would they receive little consideration for their condition,¹⁰⁰ but special measures were undertaken to discipline them. As one witness noted: "The women are subjugated to these punishments as rigorously as the men—not even pregnancy exempts them; in that case before binding to the stake, a hole is made in the ground to accommodate the enlarged form of the victim."¹⁰¹ The image conveyed is that of the body of the female slave, stripped of all clothing, beaten and whipped, with her mind and spirit broken, her body abused and yet protected. In this lies the epitome of the image of the personhood of the African-American and especially of the African-American woman, that of a thing at one time both valued and devalued.

The violence of child abuse was also commonplace and a useful tool in molding the African-American slave. Child abuse was prevalent even on the passage by ship to the new world, as demonstrated by this story:

A child of nine months was flogged continuously for refusing to eat. When beating failed to force the child to eat, the captain ordered that the child be placed feet first into a pot of boiling water. After trying other torturous methods with no success, the captain dropped the child and caused its death.¹⁰²

98. Branding was sometimes simply to mark the ownership of slaves: "Ruth and Jacob Weldon, an African couple who experienced the horrors of the slave passage saw 'mothers with babes at their breasts basely branded and scarred, till it would seem as if the very heavens might smite the infernal tormentors with the doom they so richly merited.'" HOOKS, *supra* note 96, at 18. On mainland America, branding would become a definitive method of discipline, one that left the victim open to further and more careful scrutiny by others. KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* 188, 210 (1956).

99. STAMPP, *supra* note 98, at 174-77, 186.

100. The slave ship was not the place to receive adequate prenatal care. Consequently, pregnant women received inadequate diet, exercise, and assistance during labor. "[T]he barbaric nature of childbearing on the slave ship was both physically harmful and psychologically demoralizing." HOOKS, *supra* note 96, at 18.

101. HOOKS, *supra* note 96, at 37.

102. HOOKS, *supra* note 96, at 19.

Such abuse included the sexual abuse and kidnapping of children. This abuse stripped both the child and the slave parent of any sense of independence, control, privacy, or self. This abuse was designed not only to exert control of the body, but to exert control over the will of the slave, to render the slave less than an independent actor with responsibility for self, but instead, simply a unit of economic value and a factor of economic production.

Thus, the experience with slavery served to devalue the person and the spirit of African-Americans. The experience with slavery served to legitimize the image of African-Americans as unworthy of respect and bodily integrity, and undeserving of psychological well being.

B. Images of Sex and Subjugation in the National Psyche

*"[B]ecause the same hyperaggressive monkeys who kill each other are also hypersexual, so they copulate more and therefore they reproduce more to offset the fact that half of them are dying."*¹⁰³

Since the first Africans were brought to this country in 1619, the image of African-Americans has been crafted and the subjugation of African-Americans has been justified via the postulate that their fate was deserved. The children of Africa were, it was said, scientifically and certifiably less than human. The African slave was the "savage" who could only be "tamed by being enslaved."¹⁰⁴ Cast as "other," the African slave, in the words of Dr. Josiah Nott, a 19th century physician and southern exponent of the doctrine of ethnology, was very much like the "ape" as opposed to his White and human captor, more like the monkeys who roam wild in the jungles than his civilized captor and benefactor of Christian salvation.¹⁰⁵ This perpetual state of difference, juxtaposed to the inability to "save" themselves through Christian salvation, made African-Americans "peculiarly suited to the situation which they [occupied] and not less happy in it than any corresponding class to be found in the world."¹⁰⁶

103. Goodwin Mental Health Address, *supra* note 1, at 119.

104. Address of William Harper, *Memoir on Slavery (1837)*, in *THE IDEOLOGY OF SLAVERY: PROSLAVERY THOUGHT IN THE ANTI-BELLUM SOUTH, 1830-1860*, at 89 (Drew G. Faust ed., 1981). "Savage and civilized man cannot live together, and the savage can only be tamed by being enslaved or by having slaves." *Id.*

105. Ethnography, the study of the origin of races, was used by many to "scientize" the theory of inferiority of African slaves. Dr. Nott's study concluded that placed beside each other, average specimens of the Caucasian, Negro and Ourang Outang [sic], and you will perceive a regular and striking gradation. . . . It is seen in the head and face, the arms and hands, the compressed chest, the bones and muscle of the pelvis, the flat long thighs, the forward bend of the knee, in the leg, foot and toes.

Address of Dr. Josiah C. Nott, *Two Lectures on the Natural History of the Caucasian and Negro Races*, in *THE IDEOLOGY OF SLAVERY*, *supra* note 104, at 223-24.

106. Harper, *supra* note 104, at 89. Speaking of the civilizing influence of slavery Nott

The themes of "otherness" and the civilizing and Christianizing influence of White oppressors were psychically violent themes and were very important in maintaining the "peculiar institution."¹⁰⁷ The process of "labeling"¹⁰⁸ Africans as "other" was key to establishing the social controls necessary for the perpetuation of domination. The African slave existed outside of the human scheme carved out for the existence of Whites by God. From this vantage point, one can see and understand how the scene, which portrayed the natural and inevitable domination by White captors, was played out. This theme of predestination and racial essentialism resonates throughout proslavery ideology, as well as through Dr. Goodwin's analogy. The idea of essentialism rendered slavery a necessity both for the economic well being of the slave master and for the survival of the slave,¹⁰⁹ and it denied the slave status by reducing him to an economic unit of value.¹¹⁰ The process of commodification and reduction of the slave body to its genetic essence required the slave to

believed, "[T]he institution of Slavery is a principal cause of civilization." Nott, *supra* note 105, at 223-24.

107. In rejecting the notion "that all Men are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness," William Harper suggested the contrary:

Is it not palpably nearer the truth to say that no man was ever born free, and that no two men were ever born equal? Man is born in a state of the most helpless dependence on others. . . . Wealth and poverty, fame or obscurity, strength or weakness, knowledge or ignorance, ease or labor, power or subjection, mark the endless diversity in the condition of man.

Harper, *supra* note 104, at 83.

108. "Labeling" is the process by which one is identified by an audience or community as being "deviant." Thus, people of color are labeled as deviating from the normative standard of whiteness. The pattern of identification has consequences for the person of color so labeled that are difficult to escape. Those consequences include recurring patterns of exclusion. MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* 174 (1990) (citing HOWARD BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* 9 (1963): "Social groups create deviance by taking the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender.'"). Moreover, racial images fulfill a necessary and important role in the suppression of a group in that they carry significant social weight. Delgado & Stefancic, *supra* note 96, at 1258, 1276.

109. William Harper argued that slavery was merely a means of obtaining the "command of another's labour [in order to] accumulate and provide for the future, [as well as lay the] foundations of civilization." Harper, *supra* note 104, at 81.

110. Since slaves were "perpetual children," they could not hope to survive efficiently or productively without the institution of slavery. Harper, *supra* note 104, at 99. Thus, slavery provided security to otherwise inefficient and incapable Blacks, and it provided compensation to the masters for providing that security. Harper, *supra* note 104, at 97, 99. As a perpetual child, the slave was to be seen and not heard. This denial of "voice" to the slave "was central to the ideology of European-American racism, an ideology that denied Africans their humanity and thereby justified their enslavement." Charles R. Lawrence, *Crossburning and the Sound of Silence: Antisubordination Theory and the First Amendment*, 37 VILL. L. REV. 787, 800 (1992).

relinquish all socially valued indicia of personhood and to accept the position of non-personhood, a position that constitutes the very material out of which slaves are made.

Gendered race differences were a part of the imagery which supported the institution of slavery. The African male was hypersexual and hyperaggressive and consequently, always desirous of the White female body. As constructed, he was required to be accommodating in the master's orders to breed.¹¹¹ As raised in anti-abolitionist thought, the oft-cited specter of the free Black as a threat to the purity of the White woman, the White race, and civilization as it was then known spoke to the necessity of slavery as a tool of civilization and social order.¹¹² The image of the ultimate destruction of the White race was represented by the freed Black male who would marry, or worse still, rape and breed with White women.¹¹³

Thus, the White man protected the superior position of woman but not the Black woman, for the Black woman was exposed both to the supposed sexual nature of Black men and the depredations of White men by maintaining the institution of slavery.¹¹⁴ The "woman" to be protected by the institution of slavery was, and at once was not, the woman defined in the fundamentalist Christian teachings of colonial America, the "evil sexual temptress" capable of causing the "moral downfall" of White men.¹¹⁵ It was therefore essential that "woman" be transformed through her own moral forbearance, enforced by societal expectations and coercion, into the reconstructed ideal of the "White woman:" a symbol of the essence of purity and honor, one representative and worthy of the "cult of true womanhood."¹¹⁶

African-American slave women, on the other hand, did not share the benefits of these presumptions. Slave women were the objects and the victims of power. Their "sinful" natures allowed both masters and the law the masters constructed to seize the opportunity to exploit slave women through the vehicle of extraordinary violence.

111. The "morals of this class are very loose . . . and the passions of men of the superior caste, tempt and find gratification in easy chastity of the females." Harper, *supra* note 104, at 104. See also Delgado & Stefancic, *supra* note 96, at 1258, 1262-63.

112. According to Harper, slavery was a necessity. See generally Harper, *supra* note 104, at 80. This necessity was not only political and economic; it was a moral necessity. See generally Harper, *supra* note 104, at 82-97. Moreover, slavery was a necessity of justice, humanity, purity and order, the abolition of which would result in reversion of the civilization to barbarism and intermixture of the races. Harper, *supra* note 104, at 130-31.

113. Harper, *supra* note 104, at 130-31.

114. See generally Harper, *supra* note 104, at 80-114.

115. HOOKS, *supra* note 96, at 29. See also DEBORAH G. WHITE, *ARN'T I A WOMAN: FEMALE SLAVES IN THE PLANTATION SOUTH* (1985).

116. HOOKS, *supra* note 96, at 70. See also WHITE, *supra* note 115.

The rape of the slave woman was a violent declaration of power over the female slave's body through violence. This rape was both politically and economically oriented. It was politically oriented as a method of "obtain[ing] the absolute allegiance and obedience to the White imperialistic order."¹¹⁷ It was economically oriented as a method for resupplying the human stock.¹¹⁸ In the narrative of her life as a slave, Linda Brent describes the threat of rape at the hands of the master as a "trial of girlhood," a girlhood in which "there is no shadow of law to protect her from insult, from violence, or even from death; all these are inflicted by friends who bear the shape of men."¹¹⁹ The rape of the female slave created a psychic imagery that devalued Black womanhood—a devaluation that has "permeated the psyches of all Americans and shaped the social status of all [B]lack women" even beyond the abolition of the institution of slavery.¹²⁰

The gender disability imposed on the Black woman by slavery was enormous. The Black woman had no position to protect. Not only did she suffer the physical and psychological abuse of rape, she bore the stigma and responsibility for her condition. She was not "Madonna," but instead "Jezebel," the temptress, essentially sexual in nature, and capable of "leading White men away from spiritual purity into sin."¹²¹ The Black woman bore the brunt of the discovery of the "cult of true [White] womanhood;" her nature, as the physical and emotional opposite of White women, rendered her personally responsible for her own sexual assault and brutalization, her rape, at the hands of White men.¹²²

The Black woman, in fact, was incapable of being raped. Eugene Genovese explains:

117. HOOKS, *supra* note 96, at 27. See also WHITE, *supra* note 115.

118. Although the act of sexual intercourse with a female slave was punishable by fines in Virginia, "being able to reproduce one's own labor force would be well worth the fine, even in the unlikely event that it would be imposed." PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 37 (1984).

119. HARRIETT JACOBS, *INCIDENTS IN THE LIFE OF A SLAVE GIRL* 45 (1988) (originally written under the pseudonym of Linda Brent). Linda Brent wrote of the pain of living under the threat of violence and terrorism: "I would rather drudge out my life on a cotton plantation, till the grave opened to give me rest, than to live with an unprincipled master and a jealous mistress." *Id.* at 49. To escape the sexual advances of her master, Linda Brent ran away and was hidden in a cellar closet for over six years until her freedom was secured. *Id.*

120. HOOKS, *supra* note 96, at 52. bell hooks disagrees with the characterization of rape of the female slave as simply an "institutionalized" crime during slavery. This characterization given by Susan Brownmiller does not recognize the power of the devaluation of an entire group of women across generations of men. bell hooks points to current popular images of African-American women: "One has only to look at American television twenty-four hours a day for an entire week to learn the way in which [B]lack women are perceived in American society—the predominant image is that of the 'fallen' woman, the whore, the slut, the prostitute." HOOKS, *supra* note 96, at 52 (citing SUSAN BROWN MILLER, *AGAINST OUR WILL* (1975)).

121. HOOKS, *supra* note 96, at 31.

122. HOOKS, *supra* note 96, at 32.

Rape meant, by definition, rape of White women, for no such crime as rape of Black woman existed at law. Even when a Black man sexually attacked a Black woman, he could only be punished by his master; no way existed to bring him to trial or convict him if so brought.¹²³

Thus, the Black woman had no honor to protect, and she was not permitted to ascend into the "cult of true womanhood." Children born of her, no matter who their father, would be slaves and would be subject to the power of the masters to do with them what they willed.

Together, these practices demonstrated ultimate power over slaves and especially over the body of the slave woman, for she could be forced to breed and bare children, forced to nourish them, and then forced to relinquish the body of those children for a sale or a beating like cattle at auction.¹²⁴ It was through the body of the Black woman that the hegemonic influences and images of White oppression were perpetuated.¹²⁵

C. The Persistence of Inferior Image

*"[M]aybe it isn't just the careless use of the word when people call certain areas of certain cities jungles"*¹²⁶

The labeling of African-Americans as "other" was not expunged once the legal impediment of slavery was abolished, for the social impediment of slavery was reconstituted in new laws. The African-American's status as property was replaced by other badges of inferiority that maintained the caste system established by slavery. The lynching of thousands of African-Americans during the late 19th and early 20th century,¹²⁷ Jim

123. HOOKS, *supra* note 96, at 35 (quoting EUGENE GENOVESE, ROLL, JORDAN, ROLL (1976)).

124. Female slaves were forced to breed both under threat of punishment and under promise and pressure of reward. Francis Corbin of Virginia wrote in 1819: "Our principal profit depends on the increase of our slaves." HOOKS, *supra* note 96, at 39. The end was accomplished through coercive threats of violence. The market value of the female slave was directly related to her breeding capacity. Her sale might be advertised as "breeding slave," "childbearing woman," "breeding period," or "too old to breed." HOOKS, *supra* note 96, at 39. Since plantations were "profit maximizing agricultural enterprises [faced with the] pressures of the competitive system, [slaveowners regarded] slaves solely as capital assets no different in kind from acres of land, from farming implements, or from work animals." WITHOUT CONSENT OR CONTRACT: CONDITIONS OF SLAVE LIFE AND THE TRANSITION TO FREEDOM 455 (Robert W. Fogel & Stanley L. Engermann eds., 1992) (Technical Papers, vol. 2).

125. "Blacks were chattel [W]hite men could impregnate a Black woman with impunity, and she alone could give birth to a slave. Blacks constituted a permanent labor force and metaphor that were perpetuated through the Black woman's womb." GIDDINGS, *supra* note 118, at 39.

126. See Goodwin Mental Health Address, *supra* note 1, at 119.

127. Ida B. Wells, an African-American journalist who crusaded against lynching, (see IDA B. WELLS-BARNETT, CRUSADE FOR JUSTICE: THE AUTOBIOGRAPHY OF IDA B. WELLS (Alfred M. Duster ed., 1970)), documented the occurrence of over 728 lynchings of men, women, and children

Crow laws¹²⁸ that restricted voting rights,¹²⁹ and anti-miscegenation laws¹³⁰ were all tools and social controls, but more, they were proxied representations of the general image of African-Americans as inferior beings.

An examination of one example from the history and development of the anti-miscegenation law in Virginia¹³¹ is illustrative of how racist policy making can masquerade as science in a successful attempt to legitimize racially discriminatory and socially pernicious ideas. The Racial Integrity Act of 1924 declared miscegenation illegal on the basis that the

during the last 10 years of the 19th century. GIDDINGS, *supra* note 118, at 17-31. These figures may even be conservative if the calculation is correct that during this period "an average of 138 persons each year was lynched and roughly 75% of the victims were Black." This calculates to 1038 Blacks, alone, who were lynched. JOEL WILLIAMSON, *THE CRUCIBLE OF RACE: BLACK-WHITE RELATIONS IN THE AMERICAS SINCE EMANCIPATION* 185 (1984). The archives of the Tuskegee Institute reveal that of the 4743 people lynched between 1882 and 1968, 3446 were Black. STEPHEN J. WHITFIELD, *A DEATH IN THE DELTA: THE STORY OF EMMETT TILL* 5 (1988). Blacks were subject to the ministrations of Judge Lynch for reasons "as widely disparate as arson, theft, sexual contact or even being too familiar with a White woman, murdering or assaulting a White person, hindering a lynch mob, protecting one's legal rights, not showing proper respect, or simply being in the wrong place at the wrong time." Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Interpretation*, 80 GEO. L.J. 309, 352-53 (1991) (citations omitted). It might be said in summary that Black victims of lynching were killed because they had been accused "in one respect or another of not knowing their place." *Id.* at 352.

128. See generally C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1957). "Jim Crow Laws" were racial segregation laws that forbade Blacks from obtaining public accommodations, services, and education along with Whites. See NATIONAL RESEARCH COUNCIL, *A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY* 58-60 (Gerald D. Jaynes & Robin M. Williams eds., 1989) [hereinafter *A COMMON DESTINY*]. But Jim Crow was more than a system of laws.

[Jim Crow, it has been said] established an etiquette of discrimination. It was not enough for Blacks to be second class citizens, denied the franchise, and consigned to inferior schools. Black subordination was reinforced by a racist punctilio dictating separate seating on public accommodations, separate water fountains and restrooms, separate seats in courthouses, and separate bibles to swear in Black witnesses about to give testimony before the law. The list of separations was ingenious and endless. Blacks became like a group of American untouchables, ritually separated from the rest of the population.

Raymond T. Diamond & Robert J. Cottrol, *Codifying Caste: Louisiana's Racial Classification Scheme and the Fourteenth Amendment*, 29 LOY. L. REV. 255, 264-65 (1983).

129. Until the Voting Rights Act of 1965, Blacks faced significant obstacles in exercising voting rights. Among these were poll taxes, literacy tests, "grandfather clauses" (which had, as a qualification for voting, a provision requiring that one's grandfather be eligible to vote), and White primaries. Grandfather clauses were found unconstitutional in 1915, and White primaries were held unconstitutional in 1944. However, the other obstacles remained in various southern states until the 1960's. *A COMMON DESTINY*, *supra* note 128, at 231-32.

130. Paul A. Lombardo, *Miscegenation, Eugenics and Racism: Historical Footnotes to Loving v. Virginia*, 21 U.C. DAVIS L. REV. 421 (1988).

131. Such laws in Virginia date at least from 1662. A. LEON HIGGINBOTHAM, *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD* (1978). They extended to 1967 when a Virginia miscegenation statute was declared to be unconstitutional. *Loving v. Virginia*, 388 U.S. 1 (1967).

mixing of the races was "scientifically unsound and would 'pollute' America with mixed-blood offspring."¹³² The general notion that the "mixing" would result in degenerative individuals and their reversion to primitive species supported the fear of White men which persisted from slavery: specifically, that African-American men were hypersexual and ever-wanting of White women. To protect the virtuous woman from this fall from grace, the Virginia anti-miscegenation law was passed. The law was supported by nationally prominent individuals and its enforcement was actively pursued.¹³³ Public interest and support for the law was engendered through the presentation of the matter as a "public health concern" by state administrative officials.¹³⁴ Public alarm was maintained by stories embodying the "reversion to type threat" (wherein two obviously White parents would give birth to a Black child), portending future disaster for the White race. "Experts" on the topic informed the Virginia public that any and all families laden by the "taint" of miscegenation faced this horrible future.¹³⁵ If the coercive power of law suggested a substantial level of personal compliance with the miscegenation statute, racial paranoia and fear of personal danger suggested equivalent willingness on the part of Whites to actively participate in vigorous oversight and identification of individuals whose marriages violated the law.¹³⁶

132. Lombardo, *supra* note 130, at 432.

133. John Powell and Walter A. Plecker were proponents of the "science" of eugenics. Eugenics proponents advocated the perfection of the human race through the breeding of "fit stock." Lombardo, *supra* note 130, at 423. Powell and Plecker used their associations with the Anglo-Saxon Clubs of America, a White-supremacist organization to lobby for the passage of the anti-miscegenation law. Lombardo, *supra* note 130, at 424. Plecker was a physician and the head of the Virginia Bureau of Vital Statistics. Powell was the founder of the Anglo-Saxon Clubs of America. He corresponded with prominent national figures in the eugenics movement such as Madison Grant, a New York attorney and officer of the American Eugenics Society and author of *Passing of the Great Race of The Racial Basis of European History*, Lothrop Stoddard, author of *The Rising Tide of Color Against White World-Supremacy*, as well as Franklin Giddings, the first professor of sociology at Columbia University. Lombardo, *supra* note 130, at 431.

134. Information was disseminated in the Virginia Health Bulletin. Plecker spoke to various groups throughout the state and delivered this general message:

[U]nless radical measures are used to prevent it, Virginia and other parts of the Nation must surely in time go the way of all other countries in which people of two or more races have lived in close contact. . . . Complete intermarriage or amalgamation is the inevitable result. . . . The intermarriage of the White race with mixed stock must be made impossible. But that is not sufficient, public sentiment must be so aroused that intermixture out of wedlock will cease.

The public must be made to look with scorn and contempt upon the man who will degrade himself and do harm to society by such abhorrent deeds.

Lombardo, *supra* note 130, at 438 (quoting 16 VA. HEALTH BULL. 1-3 (Mar. 1924)).

135. Lombardo, *supra* note 130, at 438.

136. The act's proponents were motivated more by "politics" than by "science." "They were bound by the ideology of racism rather than by empiricism." Lombardo, *supra* note 130,

The images of African-Americans as "different" in a negative sense persist as remnants of a past that devalue Black women and men. These images are static, predictable, essentialist, and inevitable in character. The image of Black men is that of never having been real men.¹³⁷ Many men are seen as having been stripped by emasculating women of what little manhood they possessed.¹³⁸ Thus, the pathology of the Black family is created and it is represented by the "absent man," figuratively or literally, and the abnormal female-headed house.¹³⁹

at 451.

137. Stanley Elkins suggests that slaves adopted and internalized the views of their masters to the point at which they cooperated in their own subjugation. STANLEY M. ELKINS, *SLAVERY: A PROBLEM IN AMERICAN INSTITUTIONAL AND INTELLECTUAL LIFE* 81-139 (3d ed. 1976). This is the stereotype of the male slave as the perpetual child, the "Sambo" stereotype. "Sambo" was "the docile, infantile, lazy, irresponsible" slave. The "infantilization" of the African was extended to include such infantile images of African-Americans both in and outside slavery. HOOKS, *supra* note 96, at 17. See also Delgado & Stefancic, *supra* note 96, at 1262-63.

138. Jean C. Bond & Patricia Peery, *Is the Black Man Castrated?*, in *THE BLACK WOMAN* 116 (Toni Cade ed., 1970).

139. The emasculating Black woman is the stereotypic "matriarch" whose domineering tendencies produce pathologies in the Black family. This is a current representation of the Black family. In 1965, Daniel P. Moynihan published a report on the Black family, which received controversial reactions from both Blacks and Whites. In this report, he articulated the theory that the problem with the Black person in America was the Black family: "At the heart of the deterioration of the fabric of the Negro society is the deterioration of the Negro family. It is the fundamental cause of weakness in the Negro community. Unless the damage is repaired all the effort to end discrimination, poverty and injustice will come too little." GIDDINGS, *supra* note 118, at 325 (quoting LEE RAINWATER & WILLIAM L. YANCEY, *THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY* 24 (1967)). "A fundamental fact of Negro American family life is the often reversed roles of husband and wife." GIDDINGS, *supra* note 118, at 325 (quoting LEE RAINWATER & WILLIAM L. YANCEY, *THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY* at 77 (1967)).

According to Moynihan, the wife was "dominant" in most Black families and the contrary was true in most White families. The pattern was reinforced and generational, resulting in the emasculation of the Black man. Irrespective of accuracy of Moynihan's perceptions of the Black family in 1965 or today, it is clear that historically, the rise of the female-headed household is of recent vintage. See HERBERT GUTMAN, *THE BLACK FAMILY IN SLAVERY AND IN FREEDOM* (1976). Yet, the theory articulated a picture of male emasculation and female domination which created a "tangle of pathology." The Black family was characterized by high educational attainment of Black women, failure of the Black man, high rates of divorce and female-headed households, and high rates of out-of-wedlock births. GIDDINGS, *supra* note 118, at 326-27; HOOKS, *supra* note 96, at 103-18; SAMUEL F. YETTE, *THE CHOICE: THE ISSUE OF BLACK SURVIVAL IN AMERICA* 82 (1971). But see MCADOO & MCADOO, *supra* note 72, at 197-201.

There are many ways to interpret the data on Black families. "There is nothing sacred about traditional or extended family structures if they do not work." MCADOO & MCADOO, *supra* note 72, at 197-210. Families develop skills "specifically to manage their life circumstances . . . [so] growing up in a single-parent family does not necessarily predestine children to pathology." MCADOO & MCADOO, *supra* note 72, at 197-201.

bell hooks suggests that if African-Americans accept the emasculation theory, "we must [also] accept a host of outrageous misrepresentations of the Black personality. We must accept the quaint southern myth that most slaves were 'good niggers' who passively accepted the lot, the companion theory being that slavery was not so bad." HOOKS, *supra* note 96, at 118.

The image of Black women is that of the licentious temptress.¹⁴⁰ Black women carry the "badge of disgrace," formerly attached to their inferior status as slaves. Yet, lacking the societally-valued indicia of the membership in the "true cult of womanhood," Black women are left without a cloak of slavery that would at least recognize and promote their economic usefulness.¹⁴¹ Before emancipation, Black women produced children who constituted human capital, which in turn produced more wealth. Now, Black women produce children whose worth is limited by the images to which their parents are bound.

Thus, even though they are free from slavery, Black men and women are bound now by a caste of race and poverty. They are "welfare queens,"¹⁴² and members of the "underclass."¹⁴³ They have become

Paula Giddings has a more dispassionate response to the Moynihan Report. She suggests that the report was

particularly untimely, leaving Blacks with no option but to challenge it. Though many took issue with Moynihan's view of the problem . . . few criticized his suggestion for resolving it—which was even more malevolent. Moynihan concluded . . . that Black family stability could be achieved only if Black men could "strut," even if need be, at the expense of women.

GIDDINGS, *supra* note 118, at 328. The conclusion pits the interests of Black men and Black women against each other, thereby placing the interests and needs of Black children in a quandary.

140. As the licentious temptress, she was once called "Jezebel." "In every way Jezebel was the counter[-]image of the mid-nineteenth-century ideal of the Victorian lady. She did not lead men and children to God; piety was foreign to her. She saw no advantage in prudery, indeed domesticity paled in importance before matters of the flesh." WHITE, *supra* note 115, at 29.

141. William Harper has noted:

The offspring of an unmarried female slave [was] a valued commodity, in contrast to a White woman of a similar position, who would have, by falling from grace, impaired her means of support . . . materially impaired her character, and lowered her station in society. [The slave's] offspring is not a burden but an acquisition to her owner; his support is provided for, and he is brought up to usefulness.

HARPER, *supra* note 104, at 106.

142. African-Americans who are poor bear the image of generational welfare dependence in the female-headed household run by the mother who is a "welfare queen." "Welfare mother" has become a code word for the woman of color who is on public assistance. The popular image of the woman is that she would rather be on welfare than work; she would rather have additional children to increase the size of her welfare allotment; she would rather receive welfare assistance than be married to the man who is the father of her children, should she have any, for in her experience, welfare assistance is more substantial and reliable than the man of color. See generally Nina Perales, *A "Tangle of Pathology": Racial Myth and the New Jersey Family Development Act*, Feminism and Legal Theory Project Workshop on Motherhood, Columbia University School of Law (Dec. 4-5, 1992).

Moreover, the image of the African-American woman as welfare queen goes beyond Black women on welfare, to the notion that all Black people, no matter how wealthy or privileged, want something for nothing. The labeling of Lani Guinier, failed nominee of President William Clinton for the position of Assistant Attorney General for Civil Rights, as a "quota queen," suggested that Blacks demand that political power be given to them in similar fashion that wealth in the guise of public assistance is given to them. Clint Bolick, *Clinton's*

mothers and fathers of sons who have been labeled an "endangered species," and of daughters who are caught in a cycle of "teenage pregnancy."¹⁴⁴ Subsuming and denying the individuality of African-Americans,¹⁴⁵ these images represent "inherent and permanent inequality . . . apart from any environmental influence."¹⁴⁶ The social value of African-American children has never been recognized, and now their economic value is recognized as marginal or as having ceased to exist. Black people bear children who, by their very existence, become the tools for their own destruction, the murderers of their own spirits.¹⁴⁷ These children become individuals who are seen as obsolete.¹⁴⁸ African-American men and women in the inner city give birth to disposable children.¹⁴⁹

Quota Queens, WALL ST. J., Apr. 30, 1993, at A12. Guinier had argued that creative remedies be utilized when more traditional remedies failed to achieve effective voting rights under the Voting Rights Act of 1965, as amended. Critics, eventually including President Clinton, accused her of distorting fundamental democratic values. Such accusations seriously distorted Guinier's views, and speak to the power of images that call forth notions of racial and economic caste.

The collective negative images in popular culture of African-Americans in popular culture are varied, ranging from the super-stud image of the male to the specter of Willie Horton in the 1988 presidential campaign. See generally Delgado & Stefancic, *supra* note 96, at 221.

143. MICKEY KAUS, *THE END OF EQUALITY* 5 (1992). Poor people of color "have become more or less totally isolated from the rest of society, and are acquiring the status of a despised foreign presence." *Id.*

144. Young Black males are disproportionately represented among the population of Black males whose deaths are caused by accidents, homicide, and suicide. This phenomenon is called the "new morbidity" because, according to the Centers for Disease Control, in 1983 these categories of death accounted for over 75% of the deaths in the 15-24 age group. Jewelle T. Gibbs cites a number of significant stressors in the lives of young Black males and females. They are poverty, educational difficulties, including poor performance in school and lack of communication with educational authorities, high rates of unemployment, and high infant mortality rates. AN ENDANGERED SPECIES, *supra* note 10, at 161, 258-61.

145. "Black individuality is subsumed in a social circumstance—an idea, a stereotype—that pins us to the underside of this society and keeps us there, out of sight, out of mind, out of the knowledge of mind which is law." PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 121 (1991).

146. Harper, *supra* note 104, at 79. See also Delgado & Stefancic, *supra* note 96, at 1262-63.

147. As Patricia Williams stated:

[P]art of ourselves is beyond the control of pure physical will and resides in the sanctuary of those around us; a fundamental part of ourselves and of our dignity depends on the uncontrollable, powerful external observers who make up a society. I call spirit murder—disregard for others whose lives qualitatively depend on our regard—is that it produces a system of formalized distortion of thought.

WILLIAMS, *supra* note 145, at 73.

148. YETTE, *supra* note 139, at 17.

149. Speaking of the disproportionate representation of African-American men currently in the criminal justice system, Jerome Miller states:

The "nothing works" school of criminology having run its course, we are ready for a new slogan—"They're not worth the effort." We will have moved from disciplining an

V. PLANNED OBSOLESCENCE: DISPOSING OF DISPOSABLE PEOPLE

*"[T]he loss of social structure . . . has removed some of the civilizing evolutionary things that we have built up"*¹⁵⁰

"Genetic essentialism posits that personal traits are . . . determined at conception, 'hard-wired' into the human constitution."¹⁵¹ As either a concept or an ideology, genetic essentialism posits that such personal traits are permanent, and that if the genetics involved were completely understood, they would be predictable of future behavior as well as explanatory of past behavior.¹⁵² The historical image of African-Americans, alluded to and adopted by Dr. Goodwin in his explanation of the Violence Initiative, and explained in Part IV of this Article, represents a genetically essential view of African-Americans, and is a constituent of a definition of African and African-American personhood required for the system of racial caste to succeed in this country.¹⁵³

Part IV of this Article has demonstrated how a genetically essential image of African-Americans—as different, other, inferior, and inherently so—has played into the treatment of Blacks in this nation by the society at large. For African-Americans and other people of color whose social value has always been a doubtful proposition, especially for poor people of color whose lesser economic power renders them particularly vulnerable, the notion of worth as measured by genetic constitution is a threatening possibility. That notion is all the more threatening in the hands of the medical research community.

incorrigible population to controlling a disposable one. This new adventure avoids the murkiness of "too causes" and offers a decidedly more comforting analysis to the majority.

Nina Perales, *A 'Tangle Pathology': Racial Myth and the New Jersey Family Development Act*, Feminism and Legal Theory Project workshop on Motherhood, Columbia University Law School (Dec. 4-5, 1992).

150. Goodwin Mental Health Address, *supra* note 1, at 120.

151. Dreyfuss & Nelkin, *supra* note 16, at 320-21.

152. Dreyfuss & Nelkin, *supra* note 16, at 320-21.

153. The racial caste to which persons of African descent belong is defined by the entire panoply of both public and private choices and impositions that have defined the relationship between Blacks and Whites in this nation. See KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* 43-80 (1989). The term caste refers to "a rigid social stratification (which, for Blacks, has meant subordination), essentially inherited, with the sort of staying power that gives it the look of permanence." *Id.* at 251 n.13.

As an ideological concept, genetic essentialism "minimizes the importance of social context" and stands in sharp contrast with relational definitions of personhood. Dreyfuss & Nelkin, *supra* note 16, at 321. Dreyfuss & Nelkin also maintain that in "stressing the importance of immutable biological qualities, genetic essentialism also differs from traditions centered on the importance of life experiences in determining behavior." Dreyfuss & Nelkin, *supra* note 16, at 321.

The relationship between a genetically essential view of African-Americans and their treatment and place in this society is demonstrable.¹⁵⁴ Indeed, awareness of the past consequences and present effect of genetic essentialism underlies the critical response to the Violence Initiative. If genetic essentialism is in significant measure responsible for the place held by African-Americans in American society, then the introduction of the Violence Initiative, laden as it was with allusion to genetically essential images of Blacks, suggests research results in keeping with the genetically essential images called upon.

These historical and genetically essentialist images represent a threat to the presumption of equal worth and its constitutional and social concomitants, equal opportunity and equal personal worth, for they represent an unconscious racially discriminatory intent to do damage to the objects of these images—to the population of African-Americans. If, then, discriminatory intent is demonstrable,¹⁵⁵ together with the predicted and predictable disproportionate impact of the Violence Initiative on African-Americans and other people of color,¹⁵⁶ this in turn suggests that the interest of the government in proposing the Violence Initiative is suspect of being motivated primarily by unconscious and powerful “racial antagonism,”¹⁵⁷ and not by “pressing public necessity”¹⁵⁸ or a compelling governmental interest.

This Article does not propose to test whether the government’s interest in stemming the tide of urban violence stands the test of compelling or not. Instead, it suggests that given the history of medical and scientific interventions aimed at African-Americans, there is cause to suspect that the sorts of measures that can be predicted to implement the research of the Violence Initiative will express not only the societal interest in squelching violence, but also the unconscious racial motivation demonstrated by Part IV of this Article.

If, in fact, personal traits are predictable, permanent, and determined at conception, and if knowledge of these traits can be harnessed and captured as useful data, then by implication our concept of the importance of social environment—and our concept of the necessary importance in personal development of nurture as opposed to one’s genetic nature—must change to accommodate the relative uselessness of devoting economic and educational resources to the end of allowing people to change their own circumstances. Thus, if critics objected to the Violence Initiative, this was because they feared that under it, proposals to tame the problem of violence would minimize the influence of nurture, environment, and social influence; that these proposals would regard the inherent and genetic nature of African-Americans as defective and self-limiting to them as

154. See KARST, *supra* note 153, at 43-80.

155. See Part IV of this article.

156. See discussion *supra* note 10.

157. *Korematsu v. United States*, 323 U.S. 214, 216 (1944).

158. *Id.*

individuals and as dangerous to the society at large; and that this defective nature would come under societal control.¹⁵⁹

A. Medical Experimentation and Genetic Related "Discoveries" of the Past

That scientific inquiry might be motivated by racist assumptions with ill effect for subjects of the inquiry is not without precedent: the practices of medicine and science previously have been distorted by racially conceived governmental intervention in medical experimentation. The Tuskegee syphilis experiment is exemplary of this phenomenon. The Tuskegee experiment demonstrated how the burden of human experimentation is usually borne by the medically and socially disadvantaged.¹⁶⁰ The experiment represents a shameful history that embodies for many African-Americans, and others as well, a legacy of distrust for scientific investigation and medical experimentation. Moreover, the experiment offers helpful insights in understanding and interpreting the virulent reaction to the Violence Initiative as a plan which proposed to offer solutions to the public health problem of inner-city violence.

For a period of more than forty years, the United States Public Health Service conducted studies to observe the effect of untreated syphilis on Black men who lived in Macon County, Alabama.¹⁶¹ From 1932 until 1972, almost 400 men participated in this study. All of them had been told that they had "bad blood," but in fact, they all suffered from

159. Compare suggestions regarding the implications of research conducted under the Human Genome Project for social and legal norms. Dreyfuss & Nelkin, *supra* note 16.

160. See JAMES H. JONES, *BAD BLOOD: THE TUSKEGEE SYPHILIS EXPERIMENT* (1981). See also *Nova, The Deadly Deception* (PBS television broadcast, Jan. 27, 1992). Nor is the Tuskegee experiment the only racially tainted intrusion into the medical subjects who are either poor or who are people of color. For example, the eugenics movement of the late 19th century and the early 20th century created the jurisprudential atmosphere in which the United States Supreme Court decided *Buck v. Bell*, 274 U.S. 200 (1927). Justice Holmes, writing for the majority, approved a Virginia sterilization law which had been used as the basis upon which the Virginia courts had ordered the sterilization of a White girl of a low socioeconomic class. Justice Holmes stated in the often quoted passage: "Three generations of imbeciles are enough." *Id.* at 207.

The decision reflected an underlying premise of eugenics: that poor people are different from those who are more affluent. Carrie Buck was thus different because she belonged "to the shiftless, ignorant, and worthless class of anti-social Whites of the south" M. HALLER, *EUGENICS: HEREDITARIAN ATTITUDES IN AMERICAN THOUGHT* 139 (1963).

Moreover, the eugenics movement supported the notion that African-Americans were different from White people. For example, the early eugenics movement saw the utility of castration as a means of controlling the reported rise in incidence of the rape of White women by African-American men, a solution that seemed appropriate since mob lynching and capital punishment had not solved the problem. *Id.* at 46. See also *supra* note 86 (discussing disproportionate representation of women of color in federally government sponsored involuntary sterilization).

161. See JONES, *supra* note 160.

syphilis.¹⁶² Thus, unable to give consent to the study, these men were tricked into cooperation by the inducement of free physical examinations, transportation to and from area clinics, meals on examination days, and treatment for minor illnesses.¹⁶³ Additionally, many of their families were promised contributions toward burial expenses, should the men die during the course of their "treatment."¹⁶⁴

At no time did the Public Health Service inform the subjects that they could not expect to be cured. The true purpose of the "treatment" was to gather information that substantiated the postulation that syphilis was somehow a less pernicious disease in African-Americans.¹⁶⁵ In fact, during the 1930's when the experiment was instituted, there was an available treatment for syphilis, although it involved long-term therapy and was sometimes dangerous for the subject.¹⁶⁶ Moreover, once penicillin became available as a quick, safe, and effective treatment in the 1940's, it was not offered, and in fact, was denied to the subjects of the experiment.¹⁶⁷ Moreover, the experiment had the active awareness and perhaps the approval of the medical science community, for it had been discussed in medical literature and had been a forum topic at medical conferences.¹⁶⁸

The relevance of the Tuskegee syphilis experiment to the Violence Initiative does not merely concern the fact that African-Americans were then and would again be the subjects of study by the medical and scientific community investigating their susceptibility to a public health threat, even though a history of one dishonest and immoral act in the guise of government sponsored scientific inquiry bespeaks the possibility of another. The relationship between the Tuskegee experiment and the concerns raised by the Violence Initiative lie within the moral

162. Charles Pollard participated in the experiment in 1932. He reported his initiation as a subject: "So I went on over and they told me I had bad blood, Pollard recalled. And that's what they've been telling me ever since. They come around from time to time and check me over and they say, Charlie, you've got bad blood." JONES, *supra* note 160, at 5.

163. JONES, *supra* note 160, at 4.

164. JONES, *supra* note 160, at 4.

165. See generally JONES, *supra* note 160, at 16-30.

166. See JONES, *supra* note 160, at 7.

167. Charles Pollard told a story about being recognized by Nurse Eunice Rivers, an African-American woman who served as the general liaison between the subjects and the physicians. JONES, *supra* note 160, at 6. Nurse Rivers, as she was called, was particularly valuable to the experiment because of her familiarity with the subjects and her ability to readily recognize and identify them so they would not receive treatment. Charles Pollard tried to board a bus bound for Birmingham, Alabama, where he would have been able to receive treatment. Nurse Rivers, however, "snatched him out of the line" and said, "You can't go down; you can't take them shots" JONES, *supra* note 160, at 6.

168. JONES, *supra* note 160, at 9.

astigmatism¹⁶⁹ that underlies the former medical and scientific inquiry and that, by the terms of Dr. Goodwin's introduction, implicates the latter.

The inquiry conducted pursuant to the Tuskegee experiment seemingly gave few within the scientific community pause for moral reflection.¹⁷⁰ Presuming that it is true that "[s]ometimes with the best intentions, scientists and public officials and others involved in working for the benefit of us all, forget that people are people,"¹⁷¹ it is also true that scientific inquiry, as exemplified by the Tuskegee experiment, is sometimes grounded in the genetically essentialist notion that people are not all the same.¹⁷² Such notions account for scientific and medical explanations which have been offered for the African-American's "distaste for honest labor, fondness for alcohol, proclivity to crime and sexual vices, disregard for personal hygiene, ignorance of the laws of good nutrition, [and] total indifference to his own health."¹⁷³ The dubious quality of explanations such as these and inquiries such as the Tuskegee experiment suggest a cautionary vision.

This vision is given further credence by a cadre of discredited "discoveries" of the past that linked social conditions with genetic deficiencies in certain populations. For example, Dr. Frank R. Ervin of Harvard University and Massachusetts General Hospital and Dr. Lawrence Razavi of Stanford Medical School conducted a research project that suggested that normal individuals and criminals could be distinguished genetically, as indicated by their fingerprints.¹⁷⁴ Tests for this defect, it

169. A writer for the Atlanta Constitution characterized the experiment as suffering from "amoral astigmatism that saw these Black sufferers simply as 'subjects' in a study, not as human beings." JONES, *supra* note 160, at 9 (citation omitted).

170. JONES, *supra* note 160, at 9.

171. JONES, *supra* note 160, at 14.

172. Medical imagery of medical subjects as being "different" can be a powerful force in the advancement of biomedical ideology as well as biomedical ethics. In turn, this imagery can inform and transform medical and scientific practice. ROBERT J. LIFTON, *THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE* 16 (1986). For example, the Jews of Nazi Germany were called "a lower species of life, a kind of vermin, which upon contact infected the German people with deadly diseases." *Id.* Thus, the image of the Jew was crafted as different than the Aryan race. Therefore, being the "gangrenous appendix in the body of mankind," Jews could be the subject of genocide in the name of "euthanasia" as well as medical experimentation, since they were already a doomed race. *Id.*

173. JONES, *supra* note 160, at 21 (citations omitted). Jones characterizes the medical ethic of the time as reflecting the proposition that Black people were a sick and diseased lot because of their innate socio-biological deficiencies.

174. In this study, blood samples were taken of the prison inmates and their fingerprints were examined. The examiners noted an unusual pattern within the populations studied. Specifically, the sex chromosomes were "abnormal" in a small but statistically, significant percentage of the convicts. Cited as a "genetic fluke," the most observable characteristic was seen in distinctive markings in the fingerprints of the men studied when compared to those of "normal" men. The examiners determined that most normal fingerprints were characterized by "whorls and loops" as well as by the number of ridges present on the finger, with the average male in the population studied possessing 148 ridges on all 10 fingers and the typical woman

was suggested, might serve as a screening device for men upon entry into the military or perhaps at the time they first entered the criminal justice system.¹⁷⁵ Moreover, once the defect was detected, the defective individual could be referred for appropriate testing and treatment.¹⁷⁶

The theory of Drs. Ervin and Razavi, known popularly as the XYY theory for the association of abnormal fingerprints with an additional Y chromosome, was later discredited.¹⁷⁷ Questions remain, however, about the persistence of popular belief in the theory.¹⁷⁸

The popular persistence of discredited scientific notions lends further credence to the danger of submitting to scientific inquiry a proposal to reduce a social problem to genetic or inherent differences. The research of Dr. Arthur R. Jensen regarding the relationship between race and intelligence is a case in point. The "discovery" of the genetic relationship as presented in Jensen's research between genetics and intelligence quotient,¹⁷⁹ more popularly known as "IQ," revealed that African-Americans averaged about fifteen points below the average of Whites on IQ tests and suggested that this phenomenon was responsible for a difference in scholastic aptitude between the groups.¹⁸⁰

Further, Jensen found correlations between occupational attainment, socio-economic standing, and deviant behavior such as crime and juvenile delinquency.¹⁸¹ He concluded that this genetic disadvantage was sufficient to warrant reevaluation of the socio-economic and educational

possessing 127 ridges. In contrast, the fingerprints of inmates showed small arches rather than whorls or loops and had an average of 118 ridges. Additionally, prison inmates carried an extra Y chromosome. YETTE, *supra* note 139, at 248 (citing *Anatomy of Violence*, NEWSWEEK, Jan. 12, 1970, at 60-61). This study forms the basis of the "XYY" theory of criminal predisposition, that males with an extra Y chromosome are predisposed to violent criminal behavior.

175. YETTE, *supra* note 139, at 249.

176. YETTE, *supra* note 139, at 249.

177. This theory has been convincingly rejected. See Daniel Goleman, *New Storm Brews on Whether Crime Has Roots in Genes*, N.Y. TIMES, Sept. 15, 1992, at C1. However, the theory persists in popular conception. See, e.g., ALIEN³ (Twentieth Century Fox 1992) (which posits an alien infestation of a prison colony of XYY inmates).

178. See ALIEN³, *supra* note 177.

179. Intelligence quotient (IQ) is a "number used to express the apparent relative intelligence of a person determined by dividing his mental age as reported on a standardized test by his chronological age and multiplying by 100." WEBSTER'S NEW COLLEGIATE DICTIONARY 629 (9th ed. 1987).

180. Arthur Jensen, *How Much Can We Boost IQ and Scholastic Achievement?*, 39 HARV. EDUC. REV. 1 (1969).

181. Richard Delgado, *Can Science Be Inopportune?: Constitutional Validity of Governmental Restrictions on Race-IQ Research*, 31 UCLA L. REV. 128, 138 (1983) (citing Arthur Jensen, *The Current Status of the IQ Controversy*, 13 AUSTL. PSYCHOL. 7 (1978)). Note the effect of biological explanations for these differences. Biological explanations serve a legitimizing function for both the "processes and products of [our] social organization." Robert L. Hayman & Nancy Levit, *The Constitutional Ghetto*, 1993 WIS. L. REV. 627, 668 (1993). Therefore, "as a consequence of their innate talents," or lack thereof, African-Americans as a group appear, as Professor Bell might say, like faces at the bottom of the well. *Id.* See generally BELL, *supra* note 10.

resources that had been used to foster equal opportunity and to bolster the African-Americans' chance of occupational and educational success. The extension of such resources, he argued, would produce little benefit.¹⁸²

In response to growing resistance to government funded research on IQ testing, Jensen justified the legitimacy of the continued research on the basis of the threat of the continuance of "dysgenic trends" in urban inner city areas.¹⁸³ This reductionist theory makes essential the nature of the race-IQ relationship. Pursuant to this line of thinking, society would be advised to spend significant resources researching the extent to which the IQ is affected by race before attempting to remedy the problems in the inner city.¹⁸⁴

Although, the Jensen theory has been significantly and convincingly countered,¹⁸⁵ this theory gathered recognition as an adherent William Shockley, a Nobel Prize winning physicist stepped outside of his field to advance the argument that public policy should be based on the genetic inferiority of Blacks.¹⁸⁶ That a scientist of Shockley's stature would stand on a discredited scientific theory beyond his field of expertise makes a powerful statement respecting the power of the historical images of African-Americans and the genetic-essentialist notions that underlie them.

B. Prescriptions for Violence

The urban riots of the 1960's called upon the nation to reevaluate its commitment to remedying socio-economic, educational, and housing

182. Delgado, *supra* note 181, at 138; see also ARTHUR R. JENSEN, *BIAS IN MENTAL TESTING* 242 (1980) ("We no longer speak of any kind of test score as a measure of a person's capacity or potential. . . . The notions of capacity and potential suggest some clear-cut and inexorable upper limit of development."). This seems to be a retreat from his earlier and more strident position. Jensen notes that courts have used data from psychometrics, the science of mental testing. "[T]he assumption of equal or equivalent intelligence, across all human populations . . . [w]hatever its ideological basis, is scientifically unwarranted." JENSEN, *supra* at 370. Note the effect of biological explanations for these differences. Biological explanations serve a legitimizing function for both the "processes and products of [our] social organization." Hayman & Levit, *supra* note 181, at 668.

183. Delgado, *supra* note 181, at 138 (citing Karier, *Testing for Order and Control in the Corporate Liberal State*, in *THE IQ CONTROVERSY*, 339, 344-45 (N.J. Block & Gerald Dworkin eds., 1976)). Dysgenics bears a strong relationship to the "reversion to type" theory that was used as justification for the Virginia Racial Integrity Act of 1924. See Lombardo, *supra* note 130. Dysgenics involves the "study of retrogressive evolution due to the disproportionate reproduction of the genetically inferior." Delgado, *supra* note 181, at 141. Race-IQ research and DNA research which look to genetic origins of human behavior have been criticized as being "inhumane, inopportune and likely to cause social chaos." Delgado, *supra* note 181, at 145. The research has been defended on a First Amendment basis. Delgado, *supra* note 181, at 154-65.

184. Delgado, *supra* note 181, at 141 (citing Arthur Jensen, *Race and the Genetics of Intelligence*, in *THE IQ CONTROVERSY* (N.J. Block & Gerald Dworkin eds., 1976)).

185. See generally SOWELL, *EDUCATION: ASSUMPTIONS VERSUS HISTORY* 41-63 (1986).

186. William Shockley, a physicist, proposed a mathematical model that explains the difference in income earning potential for African-Americans and Whites in terms of neurological factors as opposed to environmental ones. Delgado, *supra* note 181, at 141.

disparities between the inner-city poor and other members of the society.¹⁸⁷ In the wake of these disturbances, a fervor developed both in the federal government and in the medical community to develop a program to cure, prevent, or simply contain violence associated with the urban riots. Many of the measures that grew out of this period threatened the civil liberties of individuals residing in the inner city.

Important and relevant for this discussion are not the plans for handling violence, but rather the conceptual framework created by a focus on a designated group—poor Black residents of the inner city—as being the paradigmatic example of violent degeneracy. The War on Poverty¹⁸⁸ had not been won when the members of the House Un-American Activities Committee devised a plan that would squelch further urban violence, should the threat occur again.¹⁸⁹ The plan, as delivered to President Johnson, was devised to contain individuals the committee designated as “Black guerilla fighters.”¹⁹⁰

Guerilla warfare, as envisioned by its proponents at this stage, would have to have its base in the ghetto. This being the case, the ghetto would have to be sealed off from the rest of the city. Police, State troopers, and the National Guard could adequately handle this chore and, if they needed help, the Regular Army would be brought into service.

Once the ghetto is sealed off, and depending upon the violence being perpetrated by the guerrillas,¹⁹¹

several actions could be taken by the authorities.

Among the possible actions were curfews, which would restrict inhabitants after sundown; night patrols by the authorities; the use of informers among ghetto residents to ferret out “guerrillas;” classification of the ghetto population through an office that would issue photo-identification “census cards” to allow for easy monitoring; and suspension of most civil liberties during a guerilla uprising, under a suspension of Constitutional guarantees.¹⁹² Because a new urban uprising and the government’s response to it would equate to a “state of war,” detention centers would be activated for the imprisonment of the “warring guerrillas.”¹⁹³ Through these measures, the committee predicted that the “revolutionaries” could be isolated and destroyed in a short period of time.

President Johnson rejected this plan of action, but the significance of this story is not a presidential decision for the good. Rather, the

187. Delgado, *supra* note 181, at 141 (citing Arthur Jensen, *Race and the Genetics of Intelligence*, in *THE IQ CONTROVERSY* (N.J. Block & Gerald Dworkin eds., 1976)).

188. The Civil Rights Act of 1964 had passed and President Johnson had hoped to help poor Blacks “walk through” the doors that would lead to the “Great Society” by waging a “War on Poverty” as implemented by the Office of Economic Opportunity. *AN ENDANGERED SPECIES*, *supra* note 10, at 301-02.

189. YETTE, *supra* note 139, at 32.

190. YETTE, *supra* note 139, at 32.

191. YETTE, *supra* note 139, at 32-33.

192. YETTE, *supra* note 139, at 33.

193. YETTE, *supra* note 139, at 33.

significance is that a committee of Congress, with considerable public support among the dominant population, targeted a significant portion of the African-American population as violent "revolutionaries" who stood to suffer significant loss of civil liberties simply because of their status and location within the inner city.¹⁹⁴

Contemporaneous to congressional deliberations on the inner-city uprisings of 1967 and 1968, the medical community studied the problem, and "political" psychosurgery was also offered as a solution to the recent violence in the inner city.¹⁹⁵ Brain disease was proffered as the cause of urban riots, and some members of the medical establishment cited a need for screening of Americans in order to avoid recurring urban social disorder.¹⁹⁶ Some proffered the necessity for the development and use of psychosurgery as a method of controlling violent behavior.¹⁹⁷ Proponents of psychosurgery estimated that ten to twenty million people

194. YETTE, *supra* note 139, at 33.

195. Psychosurgery involves the implantation of "electrodes in one or both of almond-shaped nuclei in the temporal lobes, paired structures in the brain. The electrodes are used to record the electrical discharges in these nuclei and to destroy the nuclei if the discharges are abnormal." In 1972, the Senate Appropriations Committee had planned to fund a Department of Health, Education and Welfare one million dollar project. "The appropriation would have provided money to the National Institute of Neurological Diseases and Stroke, part of the National Institutes of Health, to support violent-behavior research at university-affiliated medical centers in Boston, Los Angeles and Houston." *Mind Control Hit*, WASH. EVENING STAR, Sept. 24, 1972, at 1. The funding was halted, however, because of the ethical implication of experimental surgery intended to alter behavior. *Id.*

Psychosurgery often left the patient treated with loss of memory of recent events, decline in simple awareness, suicidal tendencies, lack of creativeness, and loss of the ability to get angry. B.J. Mason, *New Threat to Blacks: Brain Surgery to Control Behavior*, EBONY 63 (Feb. 1973).

Representative Symms suggested that the United States government should not fund projects that involved Skinnerian-type behavior modification and psychosurgery because they are "based on an assumption that man is nothing more than a biological machine, devoid of free will and moral responsibility." 120 CONG. REC. 4454 (1974) (statement of Rep. Symms).

196. Physicians lent credence to the idea that riot participants may have suffered from defective or diseased brains:

It is important to realize that only a small number of the millions of slum dwellers have taken part in the riots, and that only a sub-fraction of these rioters have indulged in arson, sniping and assault. Yet if slum conditions alone determined and initiated riots, why are the vast majority of slum dwellers able to resist the temptations of unrestrained violence? Is there something peculiar about the violent slum dweller that differentiates him from his peaceful neighbor?

Peter R. Breggin, *Psychosurgery for Political Purposes*, 13 DUQ. L. REV. 841, 843 (1975) (citing a letter from Frank Ervin et al., to the Journal of the American Medical Association. 201 J. AMER. MED. ASSOC. 895 (1967)).

197. The debate on psychosurgery became politicized with the statements of two of its proponents: That "[v]iolence is a public health problem" and that the remedy of psychosurgery offered an assurance of "a better and safer world for all of us." Breggin, *supra* note 196, at 847 (citing VERNON MARK & FRANK ERVIN, VIOLENCE AND THE BRAIN (1970)).

may have been a part of the population suffering from violently diseased brains.¹⁹⁸

During this same time, a Michigan proposal suggested chemical castration as an adjunct of psychosurgery to control violence.¹⁹⁹ Proponents of the project argued that it was unfair to consider and treat children of limited intelligence as "equals," for when they are treated as such they become violent.²⁰⁰ What these children needed was "an authoritarian lifestyle."²⁰¹ Neurologist Ernest Rodin, an expert witness testifying on behalf of the Michigan project, stated:

Tolerance and encouragement of free thought is *probably* excellent for the high IQ bracket, but not advisable for the lower one, and one is reminded of the Roman saying: "Quod licet Jovi non licet bovi" (What is allowed for Jupiter is not allowed for the ox). The problem is that the ox may not recognize himself as an ox and demand Jupiter's prerogatives.²⁰²

Continuing the ox metaphor, Rodin argued that violence could be avoided by castrating "dumb young males," Dr. Rodin testified:

Farmers have known for ages immemorial that you can't do a blasted thing with a bull except fight or kill and eat him; the castrated ox will pull his plow; try to ride a young stallion and you will gladly settle for a gelding or a mare. It is also well known that human eunuchs, although at times quite scheming entrepreneurs, are not given to physical violence. Our scientific age tends to disregard this wisdom of the past.

... We much prefer to talk in global abstractions on a sociological basis, where millions and billions of dollars can be poured into ill-conceived do-good projects which can be readily stopped by another administration, rather than get down to cold-blooded medical research dealing with individuals rather than masses.²⁰³

Speaking of the 1967 and 1968 urban uprisings, Dr. Vernon Mark, then the Chief of Neurosurgery at Boston City Hospital said, "What we were looking at were people who behaved inappropriately in a riot."²⁰⁴

198. Breggin, *supra* note 196, at 845.

199. The project was rejected by a Michigan state court, which concluded that psychosurgery was a harmful and inappropriate method of treatment for involuntary mental patients. Breggin, *supra* note 196, at 852.

200. Breggin, *supra* note 196, at 853.

201. Breggin, *supra* note 196, at 853.

202. Breggin, *supra* note 196, at 853 (citing Dr. Rodin's unpublished speech that was entered into the public record as an exhibit in *Kaimowitz v. Department of Mental Health*, Civil No. 73-18, 434-AW (Cir. Ct. Wayne Co., Mich., July 10, 1973), in which he was an expert witness).

203. Breggin, *supra* note 196, at 853-54 (citing Dr. Rodin's unpublished speech that was entered into the public record as an exhibit in *Kaimowitz v. Department of Mental Health*, Civil No. 73-18, 434-AW (Cir. Ct. Wayne Co., Mich., July 10, 1973), in which he was an expert witness).

204. See Mason, *supra* note 195, at 64.

Such people, it was suggested, were not "normal."²⁰⁵ However, one may question what images might arise of behavior "appropriate" to a riot, of a code of formalities and etiquette that would make sense of such violence. Indeed, was the violence inflicted on African-Americans through the institution of slavery and the practices associated with Jim Crow²⁰⁶ "appropriate"—was it not "normal?" Such comments reflect a hegemonic model of violence, wherein violence in support of dominant interests is deemed legitimate, and other violence running contrary to such interests is deemed senseless. "Senseless" violence, conducted by Blacks, is more likely to be associated with organic brain disease than violence with an ascertainable and presumably legitimate motive.²⁰⁷

This model, too, is in concert with the genetically essential image of African-Americans posited in Part III of this Article. As applied to the possibility of diseased brains, as speculated by the medical community, the model suggests that extensive and even irreversible bodily intrusion is not only an acceptable expedient, but a necessary one.

The violence of the urban riots of the mid-60's sparked two types of questionable reactions. The first is typified by the proposals of the House Un-American Affairs Committee, that measures focusing on groups be undertaken: measures intended to isolate the larger, non-black population from the social ills that produced the violence—measures that would be effective only because communities of African-Americans would be denied civil liberties that have taken on the status of a civil religion.²⁰⁸ The second is represented by the suggestions of the medical community that sociologically identified inherently defective individuals within the target African-American community be subjected to medical treatment of intrusive, indeed, invasive varieties.

These proposals, in response to the violence of little more than a quarter century past, constitute an object lesson about the proposal of the Violence Initiative as a solution to the violence of today. These proposals say much about the likelihood of a paranoid rush by some, to a judgment in favor of safety from violence at any cost—so long as that cost is paid by someone else. These proposals also suggest that the very presumption of

205. Dr. William Sweet offered this rationale: "The individuals who have this ultra-low threshold to violent assault and behavior would utterly wanton and bring discredit on their movement by excesses of one sort or another. For example, when an individual opens fire on total strangers. A normal individual just doesn't do this." Mason, *supra* note 195, at 64. It made more "sense" to one writer that "ghetto conditions—not ghetto residents—were abnormal" and that accordingly, "Black rage does not follow a script." Mason, *supra* note 195, at 64.

206. See Part IV of this Article.

207. See Mason, *supra* note 195, at 64.

208. See generally Sanford Levinson, "The Constitution" in *American Civil Religion*, 1979 SUP. CT. REV. 123; Robert N. Bellah, *Civil Religion in America*, 96 DAEDALUS 1 (Winter 1967); Randall Kennedy, *Afro-American Faith in the Civil Religion; Or, Yes, I Would Sign the Constitution*, 29 WM. & MARY L. REV. 163 (1987); Sanford Levinson, *Pledging Faith in the Civil Religion; Or, Would you Sign the Constitution?*, 29 WM. & MARY L. REV. 113 (1987).

an inherent medical defect as the cause of violence lends itself to medical prescriptions for violence that devalue the personal worth of those deemed defective. In the end, these proposals demonstrate the inherent danger of the Violence Initiative, for like the initiative itself, they rest on racist notions of inherent worth that call into question the conclusions drawn from them.

VI. CONCLUSION: THE IMPACT OF THE VIOLENCE INITIATIVE AND THE STATUS OF BLACK CHILDREN

The Kerner Commission's report following the 1967 riots found that our nation was becoming insidiously divided by class and race, and this finding has shown itself in the current general opinion of many Americans.²⁰⁹ A 1990 survey of the University of Chicago's National Opinion Research Center reported that fifty-three percent of non-blacks believe that African-Americans are less intelligent than Whites. Fifty-one percent believe Blacks are less patriotic. Fifty-six percent believe they are more prone to violence. Sixty-two percent believe Blacks are more likely to prefer to live off welfare and less likely to prefer to be self-supporting.²¹⁰ Clearly, at the close of the 20th century, African-Americans struggle against images that White Americans have of them, images responsible for the introduction of Africans into the country and inextricably bound to the status. The resonance and the power of these images suggest that research programs and calls for action based on research programs such as the Violence Initiative come under a high degree of scrutiny before such programs are suggested, let alone put into effect, for they bespeak unconscious racial motivation as well as a disproportionate impact on a distinct racial group.²¹¹

209. The Report of the National Advisory Commission on Civil Disorders (the Kerner report) found that America was

a nation continuing to move toward "two societies, one [B]lack one [W]hite—separate and unequal." The Kerner report emphasized how the legacy of past discrimination in the forms of segregation and poverty had created a Black ghetto whose environment was destructive to many of its inhabitants—a ghetto "largely maintained by [W]hite institutions and condoned by [W]hite society." After this diagnosis, the report called for prompt national action and presented a set of recommendations aimed at reducing segregation and discrimination, safeguarding civil and political rights, and increasing educational and economic opportunities.

A COMMON DESTINY, *supra* note 128, at x-xi (citations omitted).

210. S. TERKEL, RACE (1992).

211. Congress has power to enforce § 5 of the Fourteenth Amendment in a manner that might otherwise implicate equal protection condemnation but meets constitutional muster when Congress seeks to further the ultimate goal of racial equality. *See, e.g.,* Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990); Fullilove v. Klutznick, 448 U.S. 448 (1980). Otherwise, where federal governmental policies such as the Violence Initiative create an obvious classification based on race, in a manner that might violate the Equal Protection Clause of the Fourteenth Amendment, the policy would contravene the due process clause of the Fifth Amendment of the United States Constitution. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Black children suffer from a host of problems related to poverty. They are more likely than other children to be unemployed, more likely to commit suicide, and more likely to be involved in the criminal justice system.²¹² Criminal justice data, particularly unsettling, indicates that differential arrest practices,²¹³ delinquency referral practices,²¹⁴ and delinquency admissions²¹⁵ are factors related to the disproportionate representation of young African-Americans in the juvenile justice system, which has become, in effect, a mechanism to "handle" Black children.²¹⁶ The Violence Initiative did not offer to solve the problem of crime and violence in the inner city among Black youth any more than does the criminal justice system. Instead, like the criminal justice system, it offered a "containment" of the problem, drawing a line around children of color with a message that rejects the notion that any source of the strife of inner-city life has its origin either in racial bias²¹⁷ or any other aspect of urban life.

While the Great Society social programs and their progeny were national initiatives designed to focus on the problems of poor people as a group, the Violence Initiative not only approached the problem differently, but also identified it differently. As a matter of public policy, offering solutions that might focus on individual risk factors based on genetic

The classification would be deemed "suspect" and in order to pass constitutional muster, the policy would have to be necessary to fulfill a compelling governmental interest. *Korematsu v. United States*, 323 U.S. 214 (1944). Compare the identical test as applied to classification based on race in *City of Richmond v. Croson*, 488 U.S. 469 (1989); *Hunter v. Underwood*, 471 U.S. 222 (1985); *McLaughlin v. Florida*, 379 U.S. 184 (1964). See generally Part II of this Article.

212. According to statistics, six million young Black males between the ages of 15 and 24 are more likely to end up in this position than their correlative age group in 1960. AN ENDANGERED SPECIES, *supra* note 10, at xiii.

213. Black youth are probably arrested more frequently because police surveillance is particularly high in the inner city. Police are likely to respond to "anti-authority demeanor" of Black youths more stringently. AN ENDANGERED SPECIES, *supra* note 10, at 146.

214. The juvenile justice system in Florida is exemplary of this problem. In Florida, the eight-year period between 1982 and 1990 saw an increase of 113% for Black delinquency referrals, but only 36% for White delinquency referrals. LYNCH & PATTERSON, *supra* note 12, at 89.

215. As of 1988, Black youths constituted over half of the youth population in juvenile detention facilities on any given day. AN ENDANGERED SPECIES, *supra* note 10, at 147.

216. AN ENDANGERED SPECIES, *supra* note 10, at 147. In 1984, Black children who may have found themselves facing juvenile prosecutions were only 15% of the population of the United States under 18 years of age. However, during this same year, they represented 45% of the arrests for murder and non-negligent manslaughter, 54% of the arrests for forcible rape, and 39% of the arrests for aggravated assault within this age group. AN ENDANGERED SPECIES, *supra* note 10, at 132.

217. "[U]nlike many societies in which minorities are oppressed by a powerful majority, the basic ideologies of American society reject [notions of] racial bias." AN ENDANGERED SPECIES, *supra* note 10, at 295. Yet, the Violence Initiative does not reflect the basic American ideology of Equal Protection, but rather American societal practice of racial suspicion and antagonism.

differences, the Violence Initiative threatened to imperil all of America: both Black and White. If indeed, as has been suggested, the gene pool in the United States is deteriorating,²¹⁸ and there is a causative relationship between race, IQ, and criminal behavior, then national anti-crime policy might come to reflect measures involving early detection, identification, and preventative treatment of individuals who might later demonstrate violent behavior. All African-Americans might be subject to such treatment irrespective of actual behavior.

Policy might also come to reflect "rational" decisions to provide disincentives to the reproductive capacity of genetically disadvantaged people in order to "protect" their offspring from "genetic enslavement," and might reflect also a reevaluation or special commitment of societal resources for genetically superior groups.²¹⁹ If the social, educational, and health problems of Black people of the inner city are found to be caused by genetic deficiencies and defects, then society would be imprudent in allocating resources to solve problems which are virtually unsolvable. Indeed, society would be equally imprudent to allocate extraordinary resources to individuals who are genetically destined to succeed.²²⁰

The relationship of genetic essentialism to the research offered by the Violence Initiative is ominous. The problem with reconciling social science and pure science theory with law is that if this reconciliation is to be useful, legislatures and governmental agencies must be able to rely on it to formulate policy. When the data suggests that the course of an individual's life—or more importantly, a group of individuals' lives—is significantly impacted or directed by genetic determinants, governmental policy-making bodies must tread with care. Our basic moral conceptions of free will and basic political notions of freedom, equality, and due process stand in danger of total revision.

In our society, science is valued and regarded highly because of a perception of objectivity and valuelessness.²²¹ The social atmosphere created by the tone of the Violence Initiative is menacing because as a society, without reference to any normative understandings or biases that underlie the initiative, we ascribe to it the seal of approval and the legitimacy of a scientific inquiry through which undisputable observations

218. Delgado, *supra* note 181, at 142.

219. William Shockley suggests that there is a dysgenic trend in the United States and that it would be most detrimental in the event of nuclear disaster. "Blacks without infusions of White genes would suffer genetic enslavement." Delgado, *supra* note 181, at 142 (citing Shockley, *Dysgenics, Geneticity and Raceology: A Challenge to the Intellectual Responsibility of the Education*, 72 PHI DELTA KAPPAN 297 (1972)).

220. Delgado, *supra* note 181, at 141 (citing Arthur Jensen, *Race and the Genetics of Intelligence*, in *THE IQ CONTROVERSY* (N.J. Block & Gerald Dworkin eds., 1976)).

221. Na'im Akbar, *Our Destiny*, in *BLACK CHILDREN: SOCIAL, EDUCATIONAL AND PARENTAL ENVIRONMENTS* 21-22 (Harriette P. McAdoo & John L. McAdoo eds., 1985).

are made, objective studies are conducted, and valid conclusions are derived.²²²

In fact, as this Article has demonstrated, the Violence Initiative cannot be divorced from the racist images it stands upon and evokes. The purported strength of the Violence Initiative was its focus on the "individual" as a leveraging factor in reducing inner-city violent crime.²²³ It is this factor, however, that changes the conceptual framework that organizes our thinking about the origins of crime, both juvenile and adult, about the function and structure of the juvenile justice system, about our concerns with respect to how governmental resources should be used to effect positive changes in the lives of inner city children.

By its own terms, the Violence Initiative was not calculated to bring about a change in the lives of inner-city children through programs to eradicate poverty related social ills. Rather, it was to be focused only on the recategorization and reevaluation of the individual in terms of worth, a redefinition of human beings as "reducible to their material characteristics."²²⁴ The Violence Initiative represented a threat to designate the inner-city African-American child as "genetically different," "genetically disadvantaged," "genetically disabled," and "genetically inferior." The result, both predictable and predestined, would be a mere containment of African-American inner-city children in their current circumstances.

222. The problems inherent in analyzing the intersection of science and politics is evident in the problems and issues created by the Violence Initiative. Science, as a mechanism for oppression is obviated by the scientific "finding" that significant numbers of inner city African-American children and other children of color are biochemically damaged or genetically defective "replicates and legitimizes 'scientifically' what has already been established politically." *Id.*

223. Dr. Goodwin's comments suggest that the policy intervention strategy of the Violence Initiative is a "quick" solution to the problem of inner-city violence:

What we have as an agency that isn't represented anywhere else in the Public Health Service is we have the expertise in individual vulnerability and I think if one is looking at a sort of a triage look at how you actually get at this extremely complicated problem

[I]f you are going to leverage that at all, in my view, you are going to leverage it through individuals, not through large social engineering of society, not through things as politically hot as gun control because by the time you get that passed you could rack up quite a few more violent deaths.

Goodwin Mental Health Address, *supra* note 1, at 116-17.

224. Akbar, *supra* note 221, at 21.